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International conventions for protecting inventions

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1. Introduction

1.1 Paris Convention for Protection of Industrial Property

This text was signed by fourteen states in 1883. The main provisions relating to patents in it were as follows: -

Patents granted in different contracting States for the same invention are independent of each other: the granting of a patent in one contracting State does not oblige the other contracting States to grant a patent; a patent cannot be refused, annulled or terminated in any contracting State on the ground that it has been refused or annulled or has terminated in any other contracting State.

The inventor has the right to be named as such in the patent [1].

The grant of a patent may not be refused, and a patent may not be invalidated, on the ground that the sale of the patented product, or of a product obtained by means of the patented process, is subject to restrictions or limitations resulting from the domestic law.

Each contracting State that takes legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exclusive rights conferred by a patent may do so only with certain limitations. Thus, a compulsory license (license not granted by the owner of the patent but by a public authority of the State concerned) based on failure to work the patented invention may only be granted pursuant to a request filed after three or four years of failure to work or insufficient working of the patented invention and it must be refused if the patentee gives legitimate reasons to justify his inaction. Furthermore, forfeiture of a patent may not be provided for, except in cases where the grant of a compulsory license would not have been sufficient to prevent the abuse. In the latter case, proceedings for forfeiture of a patent may be instituted, but only after the expiration of two years from the grant of the first compulsory license [2]

1.2 General Agreement on Tariffs and Trade (GATT)

The Second World War had witnessed the devastating consequences on the UK and its allies and in the process of extending helping hands to them for their involvement in the war; the economy of the USA was also seriously affected. In order to come out of the economic mess/turmoil, the USA initiated international multi-lateral co-operation. The result being the agreement of GATT (General Agreement on Tariffs and Trade). It is interesting to note that when International Monetary Foundation (IMF) was set up in 1944, it was decided then that an international trade organization would be created but it did not materialize because the USA was not willing to establish such an organization. At that point of time, the USA apprehended that such a move might benefit the socialist countries to exert influence on the poor nations. After the disintegration of the Soviet Union, this apprehension did not exist anymore. The proposal of 1944 came into reality after a thorough discussion from 1986 to 1993. The GATT has started with great expectations. It suggested the full use and development of resources of the world community and the enhancement of production and exchange of goods besides reciprocal and mutually beneficial arrangements involving significant reduction of Tariffs and a gradual elimination to other barriers of trade. Despite the interest of various nations to protect self-interest, this organization continued till 1990 [3].

India was a signatory to the GATT, which was a binding contract on 117 countries. GATT restricted its member countries from discriminating between its, trading partners by discouraging imports from a particular from a particular country or subsidizing its own goods and dumping them in the international market. To harmonize international trade between the member countries, GATT had certain specific articles such as TRIPS and TRIMS. TRIPS were an integral part of GATT. Intellectual Property Rights are the rights of the originator of an innovative idea or product to hold sole international commercial rights for a period of time. This is to be ensured by a strong patent system, which will confer exclusive rights on an inventor to make, use or sell the product or process of his invention. The purpose of providing the patent is to allow the inventor to enjoy the market exclusivity to generate the returns for the time, money and effort spent on the invention.

Indians were very good in process technology and Indian Scientists could develop their own process once any new molecule was introduced overseas and the molecules were introduced in Indian market within a span of 3 to 5 years. This is because India was not a signatory to the Paris Convention and was not a member of GATT at that time. New molecule introduction with minor variations in process technology by Indian companies was called as piracy by original researchers. However, with the policy of Industrial Liberalization and to bring a global discipline, a number of issues connected with International agreement on Trade Related Aspects of Intellectual Property rights have been discussed and the negotiations concluded in 1993. The outcome of the final Uruguay round of discussion is the GATT Agreement, 1994, the final text signed by 115 countries that are members of WTO [4].

2.2.1 Terms of GATT: The GATT Agreement covered every aspect of international movements of goods and services along with protection and enforcement for technological innovation. The salient features of GATT were: -

- Trade related intellectual property rights (TRIPS)
- Trade related investment measures (TRIMS)
- Trade in services agreement (GATS)

The objective of the TRIPS agreement is protection and enforcement of intellectual property rights to promote

technological innovation and to transfer the dissemination of technology for the mutual advantages of producers and users of technological knowledge. It contains specific provisions and scope of patentability of drugs and agrochemicals. The TRIPS agreement also provides that patents shall be available and patent right enjoyable without discrimination as to the place of invention, field of technology and whether products are imported or locally produced. On fulfillment of certain conditions Exclusive Marketing Rights (EMR) will be allowed to the patentee to protect the innovations or product patent and prevents other from making, selling or distributing such products even if manufactured by alternate process. Since patentability extends to products or process the terms of patent would be applied for twenty years for product patents and then twenty years for process patent, particularly in the chemical field including drugs and pesticides. In case of drugs and medicines, patents will be available for its usage forms, dosage forms and their combinations. New process would be patented and new dosage forms etc would also be patented and this kind of monopoly protection in some forms or other would be in a period of 10 to 15 years [5].

1.3 Trade Related Intellectual Property Rights (TRIPS)

Before the 1986-94 Uruguay Round negotiations, there was no specific agreement on intellectual property rights in the framework of GATT multilateral trading system. However, some principles contained in the GATT had a bearing on the intellectual property measures taken on import or exports. The TRIPS has become part of the international regime for the intellectual property in addition to Paris Convention. The agreement on TRIPs is divided into 8 parts containing 73 articles. All the important principles of the Paris Convention have been incorporated in the TRIPs as it is. Articles 1-12 and Article 19 of the Paris Convention are incorporated in the TRIPs Agreement [6].

Articles 27, 30, 31, 33, 40 and 70 of the TRIPS Agreement are of peculiar importance and deal with patents.

Article 27 of TRIPS declares, "patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application [7]. Patent rights are enjoyable without discrimination as to the place of invention, the field of technology [8] and whether products are imported or locally produced.

In *Canada-Pharmaceutical Patents,* in explaining its understanding of the term "without discrimination" in Article 27, the Panel advised against using the term "discrimination" whenever "more precise standards are available," given the potentially "infinite complexity" of the term. The Panel was of the view that "the primary TRIPs provisions that deal discrimination, such as the national treatment and most favored-nation provisions in Articles 3 and 4, do not use the term "discrimination." They speak in more precise terms. The ordinary meaning of the word discriminate is potentially broader than these more specific definitions. It certainly extends beyond the scope of differential treatment. It is a normative term, pejorative in connotation, referring to the results of unjustified imposition of differentially disadvantageous treatment. Discrimination may arise from explicitly different treatment, sometimes called 'de facto discrimination'. The standards by which the justification for differential is measured are a subject of infinite complexity. 'Discrimination' is a term to be avoided whenever more precise standards are available, and, when employed, it is a term to be interpreted with caution, and with care to add no precision than the concept contains [9].

The Panel interpreted the words, "do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties" in Canada-Pharmaceutical Patents. It was of the view that the third condition of Article 30 requires that the proposed exception must not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of the third party. Although Canada, as the party asserting the exception provided for in Article 30, bears the burden of proving compliance with the conditions of that exception, the order of proof is complicated by the fact that the condition involves proving a negative. One cannot demonstrate that no legitimate interest of the patent owner has been prejudiced until one knows what claims of legitimate interests can be made. Likewise, the weight of legitimate third party interests cannot be fully appraised until the legitimacy and weight of the patent owner's legitimate interests, if any, are defined. Accordingly, without disturbing the ultimate burden of proof, the Panel chose to analyze the issue presented by the third condition of Article 30 according to the logical sequence in which those issues became defined [10].

Members can exclude patents or their commercial exploitation within the country to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because their law prohibits the exploitation. Other exclusions are:

a) Diagnostic, therapeutic and surgical methods for treatment of humans or animals; and
b) Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any other combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

In Canada- Pharmaceutical Patents, rejecting Canada's argument that Article 27.1 did not apply to exceptions granted under Article 30, the Panel addressed the relationship between these provisions. It was of the view that Article 27 does not prohibit bona fide exceptions to deal with problems that may exist only in certain product areas. Moreover, to the extent the prohibition of discrimination does limit the ability to target certain products in dealing with certain of the important national policies referred to in Articles 7 and 8.1, that fact may well constitute a deliberate limitation rather than frustration of purpose. It is quite plausible, as the EC argued that the TRIPs Agreement would want to require governments to apply exceptions in a non-discriminatory manner, in order to ensure that governments do not succumb to domestic pressures to limit exceptions to areas where right holders tend to be foreign producers [11].

In India-Patents (US), the Appellate Board addressed the relationship between Article 27 and Article 70.8 and held that the latter provision applies in a situation where a Member does not make available patents pursuant to former provision. The

introductory clause to Article 70.8 provides that it applies "where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27…" of the TRIPs Agreement. Article 27 requires that patents be made available 'for any inventions, whether products or processes, in all fields of technology', subject to certain exceptions. However, pursuant to paragraphs 1, 2 and 4 of Article 65, a developing country Members got a transition period of 10 years until 1 January 2005. Article 70.8 relates specifically and exclusively to situations where a member does not provide, as of 1 January 1995, patents protection for pharmaceutical and agricultural chemical products [12].

The following rights are conferred on the patentee:

a) Prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing [13] for these purposes that product;
b) Where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.
c) Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts [14].

Article 30 stipulates that Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of a patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

The compulsory licensing provisions are provided in Article 31 on the following grounds. The proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time.

a) Member in the case of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.
b) Public non-commercial use.

According to Article 33 the term of protection provided is 20 years [15].

Article 40 of the TRIPs deplores: (a) the practices and conditions prevalent in the licensing of all IPRs, (b) the clauses which restrain competition having an adverse effect on the trade, and (c) which can impede the transfer and dissemination of technology. The member countries are authorized by Article 40 (2) to prevent or control, the practices or conditions that may constitute an abuse of the IPRs having an adverse effect on competitors in the relevant market. There is a specific mention of the legislation, which should be adopted in the national legislation, (ii) conditions preventing challenges to validity, and (iii) coercive package licensing.

Article 70 is of far reaching consequences for the developing countries. It states that all the obligations under this agreement will be prospective in nature. Thus, in relation to the provisions which came into force on 1st January, 2000 or 1st January, 2005, there is no liability during the intervening period except pipeline protection of Article 70 (6), (8) and (9) applicable to patent regime. The patents which fall in the public domain in India up to the expiry of ten years; there is no obligation to restore protection of them in the wake of increase in duration of patents to 20 years [16]. Under the TRIPS Agreement, developing countries including India are entitled to delay the enforcement by ten years for amending their patent rules and regulations. Indian Drug industry shall have access to manufacture the drugs, which are Patent as a result of filing applications before 1st January 1995 in any country in the world, and the off patent drugs in the generic forms, provided that the processing technology is developed in India.

The specific fall out of the changes that would be made in the patent laws on the basis of the provisions in the TRIPS Agreement would be manifold. The consumer will be hit by high prices and erratic availability of pharmaceuticals; medicines etc and the domestic industry would face the question of survival [17].

1.4 World Trade Organization (WTO)

The initiative by the multinational pharmaceutical majors for patent protection of drugs and medicines in India began in 1989 when the United States Trade Representative (USTR) targeted India under the Omnibus Trade and Competitiveness Act 1988 for providing only process, and not product, patent protection of medicines and drugs under the Indian Patents Act, 1970. Five years later, in 1994, India signed the Agreement on TRIPS and, pressured by disputes raised by the United States at the WTO, in 1999, a decade after the journey began, amended the Patents Act, so as to allow applications for pharmaceutical product patents and EMRs for drugs and medicines. While re-stating the principles of the Marrakesh Agreement establishing the WTO, the Doha Ministerial Declaration adopted in November 2001, affirmed that the TRIPS Agreement can be interpreted in a manner supportive of WTO members' rights to public health to promote access to medicines for all. As a result, the Doha Declaration has been perceived as diluting the standards for intellectual property protection imposed by the TRIPS Agreement. As India spearheaded the effort at the Doha Ministerial meetings to recognize the affordability and availability of medicines as a universal right, the Doha Declaration may well have encouraged the May 2002 amendments to the Patent Act, 1970. These (amendments) which, enlarge the exclusions from infringement and compulsory licensing provisions, combined with the repeated rejections of EMR applications by the Indian Patent Office seem to have reversed the progress towards stronger patent rights. This article examines the 2002 amendments to Indian patent law and the recent EMR rejections, in the context of the Doha Ministerial Declaration to ascertain whether Indian law, in fact, provides for pharmaceutical patent protection [18].

The main differences between GATT and WTO are as follows: - (a) GATT was ad hoc and provisional. The WTO and its agreements are permanent. WTO has a sound legal basis because members have ratified the WTO agreements and the agreements themselves describe how the WTO is to function, (b) The WTO has "members". GATT was officially only a legal text with no legal organization, (c) GATT dealt with trade in goods. The WTO covers services and intellectual property as well, (d) The WTO dispute settlement is faster, more automatic than the old GATT system, which was based on consensus of all members. Majority cannot block WTO rulings, (e) GATT 1947 has been updated and exists as GATT 1994. It operates with other WTO Agreements [19].

Following India's membership of the World Trade Organization, (hereinafter referred to as WTO) in 1995, and her obligations under the Trade Related Aspects of The Intellectual Property Rights, (hereinafter referred to as TRIPS Agreement), amendments in the patent law were necessitated. The TRIPS Agreement provides a three-stage time frame for developing countries to comply with its obligations:

- Introduction of a "mailbox" facility starting from 1995 to receive product patent application in the field of pharmaceuticals till December 31, 2004. An Exclusive Marketing Rights (hereinafter referred to as EMRs) for a period of 5 years or till the product patent is granted or patent application is rejected.
- Rights of patentee, term of patent protection, compulsory licensing, reversal of burden of proof, etc is to be complied as on January 1, 2000.
- Introduction of product patent protection in all fields of technology from January 1, 2005 including food, drugs, pharmaceuticals and chemicals [20].

1.5 Patent Cooperation Treaty (PCT)

The Patent Cooperation Treaty (PCT) was signed in 1970 and came into operation from 1978. The significant feature of the Treaty is that it establishes a system of international application and preliminary examination procedure. Presently, PCT has 108 contracting States. Although the PCT provides for an international application and search methodology, the authority to grant the patent remains with the National Patent Office. Under the PCT, an applicant applies to an international office and an international search and international preliminary examination is undertaken. Thereafter, the application is sent to the designated national offices to decide whether to grant national patents. The PCT has many advantages, interlaid, primarily that it costs towards fees and that the lengthy period between the initial application to international office and the time when that application is forwarded to the relevant national offices extends enough time to the applicant to decide issues relating to translation costs [21].

The PCT essentially establishes an international system which enables the filing with a single Patent Office (`Receiving Office') of a single application (`International Application') in the language having effect in each of those countries party to the PCT which the applicant designates in his/her application (`Designated Offices'). The treaty provides for the formal examination of the international application by the Receiving Office; subjects each international application to an international search, resulting in a report first made available to the applicant and later published; and provides the option for an international preliminary examination of the international application, which gives to the Designated Office information to decide whether or not to grant a patent, as well as to the applicant a report containing an opinion as to whether the claimed intervention meets certain international criteria for patentability. At the same time, one should understand that it does not provide for the grant of `International Patents'.

Being a unique, highly flexible and very economical procedure offered, the PCT system has grown over the years. While the number of international applications received by the International Bureau of WIPO was a mere 2,625 in 1979, it increased to over 100,000 in 2001. The international preliminary examination increased from a few hundred in 1985 to around 77,000 in 2001. The PCT has thus greater potential for facilitating as well as for harmonizing patenting at the international level [22].

The Patent Cooperation Treaty (PCT) is an agreement for international cooperation towards harmonization of patenting at the international level. Major objective of the PCT is to make the process of patenting more efficient, effective and economical in the interests of applicants seeking patents in several countries. The treaty makes it possible to seek patent protection for an invention simultaneously in each of the large number of countries by filing an `International Patent Application'. Such an application can be filed by anyone who is a national or resident of a contracting country party to the PCT. The treaty enables the filing, with a single Patent Office, of a single application in one language having effect in each of the contracting countries, which the applicant `designates' in his/her application. The PCT becomes relevant only when the applicant is interested in filing patent application in several countries. If he/she is keen on filing a patent in one country only, the PCT has no relevance.

The PCT also provides a framework for dissemination of technical information within the member countries. It promotes the exchange of technical information contained in a patent document among the countries signatory to the treaty and also with the scientific community concerned with that invention. The treaty only simplifies the procedure for an applicant to obtain patents for his/her invention in a number of countries designated for the purpose. Although the PCT application is called an `international application' the treaty does not provide for the `international patent', which is left to the specific country in which the patent is sought by the applicant. The PCT is not a platform for grant of patents. Patents continue to be granted by various National Patent Offices (referred to as `Designated Offices') in which patent protection is sought by designating the application in that country [23].

2.5.1 Organization and Administration

The PCT is an ongoing international attempt of WIPO to rationalize and facilitate a cost-effective system for filing patents internationally, conducting prior art searches and for the examination of patent applications. The PCT has created a Union, which has an Assembly. For effective discharge of its responsibilities, the PCT is assisted by a number of organs, as under:

a) International Patent Co-operation Union: - It is constituted by the countries party to the treaty for bringing about cooperation in the filing, searching and examination of applications for the protection of inventions, as well as for rendering special technical services.
b) Assembly: - Every country party to the PCT is a member of the Assembly. Important tasks that are assigned to the Assembly include (i) amendment of the regulation issued under the treaty (numbering 69 Articles), ii) adoption of the biennial program and budget of the Union, and iii) fixing of certain fees connected with the use of the PCT system.
c) c) International Bureau: - It performs the administrative tasks concerning the Union. It publishes the PCT Gazette and brings out other publications.
d) Periodic Meeting: - The overall functioning of the PCT is streamlined through periodic meetings of the following:
e) PCT Assembly (ordinary and extraordinary sessions);
1. PCT Committee for Administrative and Legal Matters;
2. PCT Committee for Technical Cooperation;

3. PCT Informal Consultation Meeting on Electronic Filing;
4. Meeting of International Authorities under the PCT;
5. Committee on Reform of the PCT; and

vii) Working Group on Reform of the PCT [24].

2.5.2 Advantages of PCT

The PCT simplifies the process of getting patents in a number of countries by filing one application. It greatly benefits the applicants, Patent Offices of the designated countries and the general public as well. The advantages of filing patent application through the PCT process are indicated below.

a) Applicant: - Basically, use of PCT saves the effort, in terms of time, work and money, for any applicant seeking protection for an invention in a number of countries. Under the PCT, the applicant files one application (international application) in one place, in one language and in one format, and pays one initial set of fees. Specific advantages to the applicant are:

1. By filing one international patent application under the PCT and designating any or all of the PCT countries, the applicant can simultaneously seek patent protection for an invention in each of a large number of countries.
2. Filing one application under the PCT entitles the applicant to obtain an international filing date for his application. This filing date will have the effect of a regular national filing in every country he / she has designated for the grant of patent.
3. The mandatory requirements that the applicant has to comply are very few such as specific requests for filing a PCT application or an indication of his / her nationality. These are mainly to confirm his / her eligibility.
4. By filing one application, the applicant can obtain the effect of regular national filings in a PCT country without initially having to furnish a translation of the application or to pay national fees.
5. A lot of time is gained before the applicant can decide to go ahead with his / her application. Due to the extra time of 18 months (more than under the traditional patent system) gained by the applicant through filing of PCT application, he / she can keep all the options open for protecting his / her invention while still investigating its commercial possibilities abroad.
6. The initial fees payable in respect of the filing of international application can be paid at one time, at one office and in one currency.
7. Through international search report, the PCT provides an excellent opportunity for the applicant to evaluate with reasonable probability the chances of his / her invention being patented before incurring major costs in foreign countries. During the international preliminary examination, he / she has the possibility to amend the international application to put it in order before processing by the Designated Offices.
8. With the benefit of the international search and preliminary examination reports conforming to the international standards, the applicant can rely upon the patents subsequently granted by the National / Regional Patent Offices.
9. If the applicant files his / her international application in the form prescribed by the PCT, he / she is reasonably assured that it cannot be rejected on formal grounds by any Designated Office during the national phase of processing the application [25].

1.6 International Patent Institute (IIB)

The International Patent Institute (or IIB standing for *Institut International des Brevets*, its French name) was an intellectual property organisation established on 6 June, 1947 in The Hague, Netherlands, by a set of European countries, France, Belgium, Luxembourg and the Netherlands. It was integrated into the European Patent Organisation on January 1, 1978. Its purpose was to centralize patent searching and archiving as well as the resources needed for the prior art searches for its member countries.

The integration of the International Patent Institute into the European Patent Organisation led in practice to the creation of the branch of the European Patent Office (EPO) at the Hague. This branch still exists and is one of three locations of the EPO (along with Munich and Berlin) where European patent applications may be filed [26].

1.7 The European Patent Convention (EPC)

The European Patent Convention (EPC) was signed in Munich in 1973 and came into operation on 1st June 1978. EPC was based upon the Patent Law of various Member States in force at that time. EPC is an inter-governmental Treaty i.e. distinct from the European community. The membership extends beyond members of the EC and currently there are twenty Member States of the EPC including Austria, Belgium, Denmark, England, France, etc. EPC is concerned with granting of European patents and its office is situated in Munich, which acts as a Centralized System for grant of European patents. Therefore, in case an applicant wishes to protect its invention in a number of European countries, then the EPC office provides them with the benefit of a single application and search procedure and a single grant of bundle of national patents in each of the countries designated by the applicant in its application [27].

1.8 Patent Law Treaty (PLT)

The Patent Law Treaty (PLT) is a patent law multilateral treaty concluded on June 1, 2000 in Geneva, Switzerland, by 53 States and one intergovernmental organization, the European Patent Organisation. Its aim is to harmonize formal procedures such as the requirements to obtain a filing date for a patent application, the form and content of a patent application, and representation.

As of April 2008, the PLT had 18 Contracting states, while 59 States and the European Patent Organisation have signed the treaty [28].

1.9 Substantive Patent Law Treaty (SPLT)

The Substantive Patent Law Treaty (SPLT) is a proposed international patent law treaty aimed at harmonizing substantive points of patent law. In contrast with the Patent Law Treaty (PLT), signed in 2000 and now in force, which only relates to formalities, the SPLT aims at going far beyond formalities to harmonize substantive requirements such as novelty, inventive step and non-obviousness, industrial applicability and utility, as well as sufficient disclosure, unity of invention, or claim drafting and interpretation [29].

1.10 Community Patent Convention

With a view to establish a European Patent System in 1960s and 1970s it was decided that a dual system of protection is required to be introduced. The first success came with the

formation of EPC that aimed to establish a centralized granting authority. Thereafter a single community patent was conceptualized that was to be obtained by one central procedure and be binding in all the member states. This came to be known as Community Patent Convention, which was signed in Luxembourg in 1975. However, unlike the EPC the CPC never come into force [30].

1.11 Rio Convention on Biological Diversity

The Rio Convention on Biological Diversity was signed in June 1992. The Convention extends to all the developing countries a platform to express their concerns over the exploitation of indigenous resources by entities and major corporations from the developed world. There are numerous instances of such situations such as the Neem Tree traditionally used in India to make medicines and insecticides has been the subject of 37 patents in Europe and the USA. The European Patent office in one such case finally opted to revoke a patent granted earlier to fungicide derived from Indian medicinal tree Neem in May 2000. There have been applications relating to the use of turmeric for treating wounds and certain inventions based on genetic material obtained from Hagahai People, a small ethic group in Papua New Guinea, have secured patents. This convention offers a strong basis to control the use made of traditional knowledge and provides an impetus for conserving biological diversity and propagating its sustainable use [31].

1.12 Convention on the Unification of Certain Points of Substantive Law on Patents for Invention

The Convention on the Unification of Certain Points of Substantive Law on Patents for Invention, also called Strasbourg Convention or Strasbourg Patent Convention, is a multilateral treaty signed by Member States of the Council of Europe on November 27, 1963 in Strasbourg, France. It entered into force on August 1, 1980 and led to a significant harmonization of patent laws across European countries.

This Convention establishes patentability criteria, i.e. specifies on which grounds an inventions can be rejected as not patentable. It intended to harmonize substantive patent law but not procedural law. This Convention is quite different from the European Patent Convention (EPC), which establishes an independent system for granting European Patents.

The Strasbourg Convention has had a significant impact on the EPC, on national patent laws across Europe, on the Patent Cooperation Treaty (PCT), on the Patent Law Treaty (PLT) and on the WTO's TRIPS [32].

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6. Alok Ray. Intellectual Property Right Law in WTO Regime: The Perspectives and Challenges for Developing Countries, op. cit note 3, 52.
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9. Panel Report on Canada-Pharmaceutical Patents, paras 7.94 and 7.98
10. KD Raju Intellectual Property Law, New Era Publications, 2005.
11. Panel report on Canada-Pharmaceutical Patents, para, 7.90.
12. Appellate Body Report on India- Patents (US), para, 52.
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