

TRIPS agreement How Nepal can benefit from it

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Intellectual property law is one of the fastest growing branches of law in the world today. The phenomenal technological developments in transport and communications have resulted in the globalisation of trade and commerce. This has its impact on patent, which is assuming international character. The world has developed far more in the past fifty years than in any other period of history. The reason is not political or economic but technological.

Patents give temporary protection to technological inventions. It is a monopoly right granted to a person who has invented a new and useful article or an improvement of an existing article or a new process of making article. The objective of granting patents is to encourage and develop new technology and industry. After the expiry of the duration of patent, anybody can make use of the invention. The protection given by a patent is generally territorial. It is limited to the country in which it was granted. However, it is possible to obtain patent protection in more than one country through a single application. The Paris Convention ensures that nationals of one member state will have the same level of patent protection in any other member state, which the latter grants to its own nationals.

The TRIPS agreement, indeed, settles a new consensus on the measures, which must exist in the legal systems of WTO countries in order to give effective meaning to substantive rights. TRIPS agreement is set to standardise substantive patent law and procedures. Article 27.1 of the TRIPS Agreement provides that member countries make patents accessible for any inventions, whether products or processes, in all fields of technology without prejudice, subject to the normal tests of novelty, inventiveness and industrial applicability. However, it excludes members from patentability for diagnostic, therapeutic and surgical methods for the treatment of humans or animals and which is necessary to protect morality, including protecting human, animal or plant life or health or avoiding serious prejudice to the environment, provided such exclusion is not made merely because the exploitation is prohibited by their law.

Article 30 of TRIPS states that members may provide limited exceptions to the patent rights, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legal interests of the patent owner, taking account of the legitimate interests of third parties.

According to Article 33, patent protection is available for 20 years from the filing date. However, in Nepal, according to IP Act 1965, patent protection is available for seven years and can be renewed twice for seven years at a time. Compulsory licensing and government use without the authorisation of the right holder are allowed, but are made subject to conditions aimed at protecting the legitimate interests of the right holder. These conditions include the obligation, as a general rule, to grant such licences only if an unsuccessful attempt has been made to acquire a voluntary licence on reasonable terms and conditions within a reasonable period of time. Certain of these conditions are relaxed where compulsory licences are employed to remedy practices that have been established as anti-competitive by a legal process.

Post-WTO accession, issue of IP rights and patent registration for biodiversity products are essential for sustainable trade. Nepal should be prepared to deal with market forces emerging from countries with stronger legislation and scientific backup to patent and market a biodiversity product. We have to think positively that protection of pharmaceuticals by patents should lead to an increase in the flow of technology transfer and foreign direct investment in developing countries like Nepal. The agreement includes various provisions that enable governments to implement their IP regime in a manner, which takes account of short-term and longer-term public health considerations.

There is also the need to discourage illegal use of patents in order to ensure healthy competition and promote sustainable economic development. Changing traditional approaches to knowledge and technology-based business tools, which need a rule-based system, is also needed. However, in Nepal, according to a record, only 60 products have been registered for patent. There is no confusion that Nepal is rich in biodiversity and resources that need protection under the patent rights.

If a member state is found to have breached its TRIPS obligations, it faces sanctions by the WTO Council on the TRIPS Agreement. Such sanctions could have the effect of limiting or even removing the trade privileges enjoyed by the offending state under the various multilateral trade agreements of the WTO. At last, the government has completed most of the necessary exercises in fulfilling its legislative and policy commitments made at the WTO.

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