

Intellectual property rights for developing countries: Lessons from Iran

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Abstract

Recent years have witnessed a heated debate about the need to overhaul the Iranian intellectual property system in both academic and policymaking circles. However, a close scrutiny of the debates reveals that a study offering a coherent account of the big pictures of the intellectual property (IP) system is still missing. This paper draws on various sources of information—extant literature, legislations, policy documents, official statements, expert commentaries, and interviews with officials—to craft a coherent account of the main features of the Iranian IP system. Emphasis will also be given to highlighting idiosyncrasies of the IP system and taking stock of the latest debates. Issues raised in this paper can hold important lessons for comparable developing countries.

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1. Introduction

Historically, the creative endeavours of humans in the form of inventions predate the notion of intellectual property (IP) as we know it. New tools, techniques and technologies were being invented for thousands of years before legal constructs awarded individuals and organizations limited ownership rights for the ideas they produced (Lemelson-MIT Program, 2003). Recent decades have witnessed a remarkable growth in the importance of IP. Overall increase in research and development (R&D) investment, shortening of product life cycles, advance of imitation techniques, emergence of new technological fields and patentable categories, and trade relating of intellectual property rights (IPRs) within the WTO framework, are among the contributing factors (Kingston, 2001; David, 1992).

The protection of IPRs in developing countries has also come to the fore in recent years. Over the past decade, IP has joined fiscal, monetary, trade and industrial policies, and overseas development assistance, as a critical area in which developing countries have come under pressure to

identify their interests and adopt appropriate policies. In a global economy increasingly propelled by knowledge-based industries, the protection of ideas and innovations has become a priority in the competitive strategy of powerful industries and countries. Thus, ownership and distribution of these assets have become an issue of paramount importance in international negotiations (UNCTAD-ICTSD, 2003). Iran is no exception regarding the above-mentioned trends. The need to revamp the IP system of the country has been fuelled by World Trade Organization (WTO) membership aspirations as well as internal debates. However, a study painting a coherent picture of the IP landscape as well as taking stock of the latest debates is still missing. This paper attempts to achieve this end by drawing on diverse sources of information, including extant literature, legislations, policy documents, official statements, and expert commentaries. An interview with the Director of the Industrial Property Office (Momtahn S.) conducted on 26 February 2008 addressed some niceties.

This paper proceeds as follows. Section 2 briefly reviews major global trends in IP regimes. In Section 3 an attempt is made to delineate the special case of developing countries in the IP arena. These two literature-based sections lead us to section 4, which will attempt to craft a coherent picture of the Iranian IP scene. This section will explore and critique the rationales of heightened interest in revamping the IP area, institutional aspects (i.e. legal, organizational,

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and procedural issues) of the IP system, and finally the patenting performance of Iranian entities. Section 5 will discuss the implications of some of the important observations. Finally, section 6 will conclude the paper with highlighting some of the findings with broader implications and tentative lessons for other similar developing countries.

2. Global trends in IP regimes

In the last two decades, patents have arguably become stronger (more likely to be upheld) and broader, became available to the public research community, were applied to a number of important categories of innovation that were previously largely unpatentable, and had their reach extended to the developing world (Jaffe, 2000). Two other changes can be added to this list from Dutfield (2003): first, the creation of new rights such as plant breeders' rights, rights to layout designs of integrated circuits, and rights related to copyright, such as performers' rights. Second, the increasing standardization of the basic features of IPRs, such as twenty-year protection terms; prior art searches and examinations for novelty, inventive step or non-obviousness, and industrial application; assigning rights to the first applicant rather than the first inventor; and providing protection for inventions in all industries and fields of technology.

The Trade Related Aspects of Intellectual Property Rights (TRIPs) agreement has implications for some of trends mentioned above, such as the standardization of IPR regimes and infiltration of IPR into developing countries; thus, a brief introduction to TRIPS would be useful here.

The increasing concerns about the piracy and counterfeiting of IP in industrialized countries, where much of the intellectual property resides, was the reason why the protection of IP was a major topic of negotiation at the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). The negotiations led to the establishment of the WTO to administer the GATT, the TRIPS and the General Agreement on Trade in Services (GATS). The TRIPS agreement is a legally binding part of the WTO that requires all member countries (151 countries as of 27 July 2007) to grant patents for inventions in all fields of technology. It requires the protection of plant varieties either by patents, or by an effective "sui generis" system, or by a combination of both. Conforming to the TRIPS agreement for most member countries implies introducing much stricter IP protection. This is expected to have far-reaching consequences on the international transfer of technology and trade relationship between the industrialized and developing countries. The TRIPS agreement, trade in goods (GATT), and trade in services (GATS) are the three pillars of the WTO. The TRIPS agreement includes for the first time in any area of international law rules on domestic enforcement procedures and remedies. A main reason for placing IPRs in the WTO and for tying the three agreements together was to allow retaliation across agreements (Maredia, 2001).

According to Gathii (2001) the TRIPS agreement is based on a private property model that encompasses two contradictory logics. The first logic views property as a market commodity. The second is a public policy perspective that results from the view that there are circumstances under which property can be legitimately burdened with public regulation in accordance with TRIPS; for example, to strike a balance between the interests of producers and consumers of items subject to IPRs.

While the TRIPS evidences the success of those committed only to the commodity vision of private property, this vision has been in serious contention and tension with an alternative vision of IPRs. The alternative vision is characterized by the view that public policy issues such as human rights, environmentalism, and public health issues like AIDS have a legitimate place in TRIPS. This tension is to some extent the outcome of the significance of seeing the TRIPS regime within the context of prevailing social, political, and economic circumstances (Gathii, 2001).

3. IPRs and developing countries

Section 2 outlined the global trends in the IP scene; however, developing countries have not been important trend setters in this field. This section deals with the special case of developing countries in the IP arena. First, general policy choices of developing countries in the face of these developments will be explained, then the costs and benefits of implementing IPR policies will be explored.

3.1. IPR policy issues for developing countries

According to Chiang (1995) only Japan and the US have managed to achieve synergies between their technology policy paradigms and the IP system, the former in a defensive mode and the latter in an offensive mode. Relatively speaking, the US industry is focused on the creation of new knowledge while most other countries seek the diffusion and utilization of technologies. The US believes IP protection is primarily for the creation rather than diffusion and application of technology. As a result, internationally stringent IP regimes will be complementary to the mission-oriented policy of the US and a strong IP system will increase the economic value of the generated technology. In a relative sense, the Japanese system is in favour of the industry rather than the patentee and favours the Japanese firm rather than the foreign inventor. The purpose of this system is to improve industrial development and to support the diffusion-oriented technology policy of Japan. Chiang (1995) concludes that a modern IP system aimed at encouraging inventions by universal or international standards has little relevance for industrialization and can even be disadvantageous for industrialization purposes.

Chen and Puttitanun (2002) offer a more moderated view than Chiang (1995) about the relevance of IPRs for industrialization. They state that while weak IPRs facilitate

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