

PATENTS ON A SHOESTRING: MAKING PATENT PROTECTION WORK FOR DEVELOPING COUNTRIES

Sean A. Pager*

INTRODUCTION

“The main challenge for developing countries is to transform [TRIPS] from a rent transfer mechanism into an effective instrument for technological development.”

— Carlos Primo Braga¹

Depending on your point of view, the 1994 TRIPS Agreement² was either a dramatic leap forward or an unprecedented act of legal imperialism.³ By putting in place mandatory minimum standards covering all the major intellectual property (IP) rights (plus some minor ones), backed by mandatory dispute resolution enforceable

* Visiting Assistant Professor, University of Richmond School of Law; Assistant Professor, Michigan State University School of Law. Special thanks are due to Paul Heald, Maggie Chon, Peter Yu, Kevin Collins, Shubha Ghosh, Doris Long, and the participants of the 2007 Georgia State Law Review Symposium, the 2007 IP Scholars Conference at DePaul University, and the 2007 Works-in-Progress in Intellectual Property Colloquium at American University. Research assistance was provided by Maryam Nemazie and Vinicius Portugal. This paper is dedicated to my daughters, Sophie and Sasha, and to my wife, Sheryl.

1. Carlos A. Primo Braga, *Trade-Related Intellectual Property Issues: The Uruguay Round Agreement and Its Economic Implications*, in THE URUGUAY ROUND AND THE DEVELOPING ECONOMIES (World Bank Discussion Paper No. 307, William Martin & L. Alan Winters eds., 1995), quoted in Robert Sherwood, *The TRIPS Agreement: Implications for Developing Countries*, 37 IDEA 491, 493 (1997).

2. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994), available at http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm [hereinafter TRIPS Agreement].

3. Some would say it was both. Compare EDMOND MCGONUM, INTERNATIONAL TRADE REGULATION §§ 21.211, 21.21-1 (1995) (“The conclusion of the . . . TRIPS Agreement was perhaps the most remarkable achievement of the Uruguay Round.”), with Francis Mangeni, *Implementing the TRIPS Agreement in Africa*, in TRADING IN KNOWLEDGE: DEVELOPMENT PERSPECTIVES ON TRIPS, TRADE AND SUSTAINABILITY 219, 230 (Christophe Bellman et al. eds., 2003) [hereinafter TRADING IN KNOWLEDGE] (describing TRIPS as “in essence written by developed country industry lobbies” to profit at the expense of the developing world). Nor do these assessments exhaust the range of views on TRIPS’ significance. See, e.g., KEITH E. MASKUS, INTELLECTUAL PROPERTY RIGHTS IN THE GLOBAL ECONOMY 2 (2000) (emphasizing TRIPS’ unique status within the WTO regime of international trade law).