

6. Progress in International Intellectual Property? Implications of the Riyadh Design Law Treaty

The Riyadh Design Law Treaty (2024)

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RIYADH DESIGN LAW TREATY

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Article 1 **Abbreviated Expressions**

For the purposes of this Treaty, unless expressly stated otherwise:

- (i) “Contracting Party” means any State or intergovernmental organization party to this Treaty;
- (ii) “Office” means the agency of a Contracting Party entrusted with the registration of industrial designs;
- (iii) “registration” means the registration of an industrial design, or the grant of a patent for an industrial design, by an Office;
- (iv) “application” means an application for registration;
- (v) “applicable law” means, where the Contracting Party is a State, the law of that State and, where the Contracting Party is an intergovernmental organization, the legal enactments under which that intergovernmental organization operates;
- (vi) references to “industrial design” shall be construed as references to “industrial designs”, where the application or the registration includes more than one industrial design;
- (vii) references to a “person” shall be construed as references to both a natural person and a legal entity;
- (viii) “procedure before the Office” means any procedure in proceedings before the Office with respect to an application or registration;
- (ix) “communication” means any application, or any request, declaration, document, correspondence or other information, relating to an application or a registration, which is filed with the Office;
- (x) “records of the Office” means the collection of information maintained by the Office, relating to, and including the contents of, applications and registrations, irrespective of the medium in which such information is stored;
- (xi) “applicant” means the person whom the records of the Office show, pursuant to the applicable law, as the person who is applying for registration, or as another person who is filing or prosecuting the application;
- (xii) “holder” means the person shown in the records of the Office as the holder of the registration;
- (xiii) “Paris Convention” means the Paris Convention for the Protection of Industrial Property, signed on March 20, 1883, as revised and amended;
- (xiv) “license” means a license for the use of an industrial design under the law of a Contracting Party;
- (xv) “licensee” means the person to whom a license has been granted;
- (xvi) “Regulations” means the Regulations referred to in Article 25;
- (xvii) “Diplomatic Conference” means the convocation of Contracting Parties for the purpose of revising the Treaty;
- (xviii) “Assembly” means the Assembly referred to in Article 26;

(xix) references to an “instrument of ratification” shall be construed as including references to instruments of acceptance and approval;

(xx) “Organization” means the World Intellectual Property Organization;

(xxi) “International Bureau” means the International Bureau of the Organization;

(xxii) “Director General” means the Director General of the Organization;

(xxiii) references to an “Article” or to a “paragraph”, “subparagraph” or “item” of an Article shall be construed as including references to the corresponding rule(s) under the Regulations.

Article 2

General Principles

(1) *[No Regulation of Substantive Industrial Design Law]* Nothing in this Treaty or the Regulations is intended to be construed as prescribing anything that would limit the freedom of a Contracting Party to prescribe such requirements of the applicable substantive law relating to industrial designs as it desires.

(2) *[Relation to Other Treaties]* Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties.

(3) *[More Favorable Requirements]* A Contracting Party shall be free to provide for requirements which, from the viewpoint of applicants and holders, are more favorable than the requirements referred to in this Treaty and the Regulations, other than Article 6.

Article 3

Applications and Industrial Designs to Which This Treaty Applies

(1) *[Applications]* This Treaty shall apply to national and regional applications which are filed with, or for, the Office of a Contracting Party.

(2) *[Industrial Designs]* This Treaty shall apply to industrial designs that can be registered as industrial designs, or for which patents can be granted, under the applicable law.

Article 4

Application

(1) *[Contents of Application; Fee]* (a) A Contracting Party may require that an application contain some, or all, of the following indications or elements:

(i) a request for registration;

(ii) the name and address of the applicant;

(iii) where the applicant has a representative, the name and address of that representative;

(iv) where an address for service or an address for correspondence is required under Article 5(3), such address;

(v) a representation of the industrial design, as prescribed in the Regulations;

(vi) an indication of the product or products which incorporate the industrial design, or in relation to which the industrial design is to be used;

(vii) where the applicant wishes to take advantage of the priority of an earlier application, a declaration claiming the priority of that earlier application, together with indications and evidence in support of the declaration that may be required pursuant to Article 4 of the Paris Convention;

(viii) where the applicant wishes to take advantage of Article 11 of the Paris Convention, evidence that the product or products which incorporate the industrial design or in relation to which the industrial design is to be used have been shown at an official, or officially recognized, international exhibition;

(ix) any further indication or element prescribed in the Regulations.

(b) In respect of the application, the payment of a fee may be required.

(2) *[Indication of Information]* A Contracting Party may require, where permitted under the applicable law, that an application contain an indication of any prior application or registration, or of other information, including information on traditional cultural expressions and traditional knowledge, of which the applicant is aware, that is relevant to the eligibility for registration of the industrial design.

(3) *[Prohibition of Other Requirements]* No indication or element, other than those referred to in paragraphs (1) and (2) and in Article 12, may be required in respect of the application.

(4) *[Several Industrial Designs in the Same Application]* Subject to such conditions as may be prescribed under the applicable law, an application may include more than one industrial design.

(5) *[Evidence]* A Contracting Party may require that evidence be furnished to the Office where, in the course of the examination of the application, the Office may reasonably doubt the veracity of any indication or element contained in the application.

Article 5

Representatives; Address for Service or Address for Correspondence

(1) *[Representatives Admitted to Practice]* (a) A Contracting Party may require that a representative appointed for the purposes of any procedure before the Office

(i) have the right, under the applicable law, to practice before the Office in respect of applications and registrations;

(ii) provide, as its address, an address in a territory prescribed by the Contracting Party.

(b) An act, with respect to any procedure before the Office, by or in relation to a representative who complies with the requirements established by the Contracting Party under subparagraph (a), shall have the effect of an act by or in relation to the applicant, holder or other interested person who appointed that representative.

(2) *[Mandatory Representation]* (a) Subject to subparagraph (b), a Contracting Party may require that, for the purposes of any procedure before the Office, an applicant, holder, or other interested person who has neither a domicile nor a real and effective industrial or commercial establishment in its territory appoint a representative.

(b) An applicant, holder, or other interested person who has neither a domicile nor a real and effective industrial or commercial establishment in the territory of the Contracting Party may act himself/herself before the Office for the filing of an application, for the purposes of the filing date, and for the mere payment of a fee.

(3) *[Address for Service or Address for Correspondence]* A Contracting Party may, to the extent that it does not require representation in accordance with paragraph (2), require that, for the purposes of any procedure before the Office, an applicant, holder, or other interested person who has neither a domicile nor a real and effective industrial or commercial establishment in its territory, shall have an address for service, or an address for correspondence, in a territory prescribed by the Contracting Party.

(4) *[Appointment of a Representative]* A Contracting Party shall accept that the appointment of a representative be filed with the Office in a manner prescribed in the Regulations.

(5) *[Prohibition of Other Requirements]* Subject to the requirements of Article 12, no Contracting Party may demand that requirements, other than those referred to in paragraphs (1) to (4), be complied with in respect of the matters dealt with in those paragraphs.

(6) *[Notification]* Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (4) is or are not complied with, the Office shall notify the applicant, holder or other interested person, giving the opportunity to comply with any such requirement within the time limit prescribed in the Regulations.

(7) *[Non-Compliance with Requirements]* Where one or more of the requirements applied by the Contracting Party under paragraphs (1) to (4) is or are not complied with within the time limit prescribed in the Regulations, the Contracting Party may apply such sanction as is provided for in its law.

Article 6 Filing Date

(1) *[Permitted Requirements]* (a) Subject to subparagraph (b) and paragraph (2), a Contracting Party shall accord as the filing date of an application the date on which the Office receives the following indications and elements, in a language admitted by the Office:

- (i) an express or implicit indication to the effect that the elements are intended to be an application;
- (ii) indications allowing the identity of the applicant to be established;
- (iii) a sufficiently clear representation of the industrial design;
- (iv) indications allowing the applicant or the applicant's representative, if any, to be contacted.

(b) A Contracting Party may accord as the filing date of an application the date on which the Office receives, together with a sufficiently clear representation of the industrial design and indications allowing the identity of the applicant to be established or allowing the applicant or the applicant's representative, if any, to be contacted, some only, rather than all, of the other indications and elements referred to in subparagraph (a), or receives them in a language other than a language admitted by the Office.

(2) *[Permitted Additional Requirements]* (a) A Contracting Party whose law, at the time it becomes party to this Treaty, requires that an application comply with any of the requirements specified in subparagraph (b) in order for that application to be accorded a filing date may, in a declaration, notify the Director General of those requirements.

(b) The requirements that may be notified pursuant to subparagraph (a) are the following:

(i) an indication of the product or products which incorporate the industrial design, or in relation to which the industrial design is to be used;

(ii) a brief description of the reproduction or of the characteristic features of the industrial design;

(iii) a claim;

(iv) the payment of the required fees;

(v) indications concerning the identity of the creator of the industrial design.

(c) Any declaration notified under subparagraph (a) may be withdrawn at any time.

(3) *[Prohibition of Other Requirements]* No indication or element other than those referred to in paragraphs (1)(a) and (2)(b) may be required for the purpose of according a filing date to an application.

(4) *[Notification and Time Limits]* Where the application does not, at the time of its receipt by the Office, comply with one or more of the applicable requirements under paragraphs (1) and (2)(b), the Office shall notify the applicant and give the opportunity to comply with such requirements within the time limit prescribed in the Regulations.

(5) *[Filing Date in Case of Subsequent Compliance with Requirements]* If, within the time limit referred to in paragraph (4), the applicant complies with the applicable requirements, the filing date shall be no later than the date on which all the indications and elements required by the Contracting Party under paragraphs (1) and (2)(b) are received by the Office. Otherwise, the application shall be treated as if it had not been filed.

Article 7

Grace Period for Filing in Case of Disclosure

A disclosure of the industrial design during a period of 12 months preceding the date of filing of the application or, if priority is claimed, the date of priority, shall be without prejudice to the novelty and/or originality, and as the case may be, individual character or non-obviousness, of the industrial design, where the disclosure was made:

(i) by the creator or his/her successor in title; or

(ii) by a person who obtained the disclosed information directly or indirectly, including as a result of an abuse, from the creator or his/her successor in title.

Article 8

Requirement to File the Application in the Name of the Creator

(1) *[Requirement That the Application Be Filed in the Name of the Creator]* A Contracting Party may require that the application be filed in the name of the creator of the industrial design.

(2) *[Formality Where There Is a Requirement to File the Application in the Name of the Creator]* Where a Contracting Party requires that the application be filed in the name of the creator of the industrial design, such requirement shall be satisfied if the name of the creator of the industrial design is indicated, as such, in the application, and:

- (i) that name corresponds to the name of the applicant; or
- (ii) the application is accompanied by, or contains, a statement of assignment from the creator to the applicant, signed by the creator of the industrial design.

Article 9

Amendment or Division of Application Including More Than One Industrial Design

(1) *[Amendment or Division of Application]* If an application that includes more than one industrial design (hereinafter “initial application”) does not comply with the conditions prescribed by the Contracting Party concerned in accordance with Article 4(4), the Office may require the applicant, at the option of the applicant, to either:

- (i) amend the initial application to comply with those conditions; or
- (ii) divide the initial application into two or more divisional applications that comply with those conditions by distributing among the latter the industrial designs for which protection was claimed in the initial application.

(2) Where permitted under the applicable law, the applicant may also, on their own initiative, divide an application into two or more divisional applications.

(3) *[Filing Date and Right of Priority of Divisional Applications]* Divisional applications shall preserve the filing date of the initial application and the benefit of the claim of priority, if applicable.

(4) *[Fees]* The division of an application may be subject to the payment of fees.

Article 10

Publication of the Industrial Design

(1) *[Maintaining the Industrial Design Unpublished]* A Contracting Party shall allow the industrial design to be maintained unpublished for a period fixed by its applicable law, subject to the minimum period prescribed in the Regulations.

(2) *[Request to Maintain the Industrial Design Unpublished; Fee]* (a) A Contracting Party may require that, for the purposes of maintaining the industrial design unpublished under paragraph (1), the applicant make a request to the Office.

(b) In respect of a request for maintaining the industrial design unpublished under subparagraph (a), the Office may require the payment of a fee.

(3) *[Request to Publish Further to a Request to Maintain Unpublished]* Where a request to maintain the industrial design unpublished has been made under paragraph (2)(a), the applicant or holder, as the case may be, may, at any time during the period applicable under paragraph (1), request the publication of the industrial design.

Article 11

Electronic Industrial Design System

A Contracting Party shall, in accordance with its applicable law, endeavor to provide a system for electronic applications and is encouraged to provide for the electronic exchange of priority documents.

Article 12

Communications

(1) *[Means of Transmittal and Form of Communications]* A Contracting Party may choose the means of transmittal of communications and elect whether to accept communications on paper, communications in electronic form, or any other form of communication.

(2) *[Language of Communications]* (a) A Contracting Party may require that any communication be in a language admitted by the Office.

(b) A Contracting Party may require that, where a communication is not in a language admitted by its Office, a translation of that communication by an official translator or a representative, into a language admitted by the Office, be supplied within a reasonable time limit.

(c) No Contracting Party may require the attestation, notarization, authentication, legalization or any other certification of any translation of a communication, except in those cases prescribed in this Treaty.

(d) Notwithstanding subparagraph (c), a Contracting Party may require that any translation of a communication be accompanied by a statement that the translation is true and accurate.

(3) *[Address for Correspondence, Address for Service and Contact Details]* A Contracting Party may, subject to any provisions prescribed in the Regulations, require that an applicant, holder, or other interested person, indicate in any communication:

- (i) an address for correspondence;
- (ii) an address for service;
- (iii) any other address or contact details provided for in the Regulations.

(4) *[Signature of Communications on Paper]* (a) A Contracting Party may require that a communication on paper be signed by the applicant, holder or other interested person. Where a Contracting Party requires a communication on paper to be signed, that Contracting Party shall accept any signature that complies with the requirements prescribed in the Regulations.

(b) No Contracting Party may require the attestation, notarization, authentication, legalization or other certification of any signature, except in respect of any quasi-judicial proceedings or in those cases prescribed in the Regulations.

(c) Notwithstanding subparagraph (b), a Contracting Party may require that evidence be filed with the Office where the Office may reasonably doubt the authenticity of any signature of a communication on paper.

(5) *[Communications Filed in Electronic Form or by Electronic Means of Transmittal]* Where a Contracting Party permits the filing of communications in electronic form or by electronic means of transmittal, it may require that any such communications comply with the requirements prescribed in the Regulations.

(6) *[Prohibition of Other Requirements]* No Contracting Party may demand that, in respect of paragraphs (1) to (5), requirements other than those referred to in this Article be complied with.

(7) *[Indications in Communications]* A Contracting Party may require that any communication contain one or more indications prescribed in the Regulations.

(8) *[Means of Communication with Representative]* Nothing in this Article regulates the means of communication between an applicant, holder or other interested person and the representative of any such person.

Article 13 Renewal

(1) *[Request for Renewal; Fee]* (a) Where a Contracting Party provides for renewal of the term of protection, it may require that the renewal be subject to the filing of a request and that such request contain some, or all, of the following indications:

- (i) an indication that renewal is sought;
- (ii) the name and address of the holder;
- (iii) the number(s) of the registration(s) concerned by the renewal;
- (iv) an indication of the term of protection for which renewal is requested;
- (v) where the holder has a representative, the name and address of that representative;
- (vi) where the holder has an address for service or an address for correspondence, such address;
- (vii) where it is permitted that renewal be made for some only of the industrial designs contained in the registration, and such a renewal is requested, an indication of the industrial design number(s) for which the renewal is, or is not, requested;
- (viii) where it is permitted that a request for renewal may be filed by a person other than the holder or its representative, and the request is filed by such a person, the name and address of that person.

(b) A Contracting Party may require that, in respect of the renewal, a fee be paid to the Office.

(2) *[Period for Presentation of the Request for Renewal and Payment of the Fee]* A Contracting Party may require that the request for renewal referred to in paragraph (1)(a) be presented, and the corresponding fee referred to in paragraph (1)(b) be paid, to the Office within a period fixed by the law of the Contracting Party, subject to the minimum periods prescribed in the Regulations.

(3) *[Prohibition of Other Requirements]* No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (2) and in Article 12 be complied with in respect of the request for renewal.

Article 14

Relief in Respect of Time Limits

(1) *[Extension of Time Limits]* A Contracting Party shall provide for the extension, for the period prescribed in the Regulations, of a time limit fixed by the Office for an action in a procedure before the Office, if a request to that effect is filed with the Office in accordance with the requirements prescribed in the Regulations, and the request is filed, at the option of the Contracting Party:

- (i) prior to the expiry of the time limit; or
- (ii) after the expiry of the time limit, and within the time limit prescribed in the Regulations.

(2) *[Continued Processing]* Where an applicant or holder has failed to comply with a time limit fixed by the Office of a Contracting Party for an action in a procedure before the Office, and that Contracting Party does not provide for an extension of a time limit under paragraph (1), the Contracting Party shall provide for continued processing with respect to the application or registration and, if necessary, reinstatement of the rights of the applicant or holder with respect to that application or registration, if:

- (i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;
- (ii) the request is filed, and all of the requirements for the said action, in respect of which the time limit applied, are complied with, within the time limit prescribed in the Regulations.

(3) *[Exceptions]* There shall be no requirement to provide for the extension of time limits under paragraph (1) or continued processing under paragraph (2) with respect to the exceptions prescribed in the Regulations.

(4) *[Fees]* A Contracting Party may require that a fee be paid in respect of a request under paragraph (1) or (2).

(5) *[Prohibition of Other Requirements]* No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (4) be complied with in respect of the relief provided for under paragraph (1) or (2), except where otherwise provided for by this Treaty or prescribed in the Regulations.

(6) *[Opportunity to Make Observations in Case of Intended Refusal]* A request under paragraph (1) or (2) may not be refused without the applicant or holder being given the opportunity to make observations on the intended refusal within a reasonable time limit.

Article 15

Reinstatement of Rights After a Finding by the Office of Due Care or Unintentionality

(1) *[Reinstatement of Rights]* If a Contracting Party does not provide for a relief measure under Article 14(1)(ii) or 14(2), the Office shall reinstate the rights of the applicant or holder with respect to that application or registration, where an applicant or holder has failed to comply with a time limit for an action in a procedure before the Office, and that failure has the direct consequence of causing a loss of rights with respect to an application or a registration, if:

- (i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;

(ii) the request is filed, and all of the requirements for the said action, in respect of which the time limit applied, are complied with, within the time limit prescribed in the Regulations;

(iii) the request states the reasons for the failure to comply with the time limit; and

(iv) the Office finds that the failure to comply with the time limit occurred in spite of due care required by the circumstances having been taken or, at the option of the Contracting Party, that any delay was unintentional.

(2) *[Exceptions]* There shall be no requirement to provide for the reinstatement of rights under paragraph (1) with respect to the exceptions prescribed in the Regulations.

(3) *[Fees]* A Contracting Party may require that a fee be paid in respect of a request under paragraph (1).

(4) *[Evidence]* A Contracting Party may require that a declaration or other evidence in support of the reasons referred to in paragraph (1)(iii) be filed with the Office within a time limit fixed by the Office.

(5) *[Opportunity to Make Observations in Case of Intended Refusal]* A request under paragraph (1) may not be refused, totally or in part, without the requesting party being given the opportunity to make observations on the intended refusal, within a reasonable time limit.

Article 16

Correction or Addition of Priority Claim; Restoration of Priority Right

(1) *[Correction or Addition of Priority Claim]* A Contracting Party shall provide for the correction or addition of a priority claim with respect to an application ("the subsequent application"), if:

(i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;

(ii) the request is filed within the time limit prescribed in the Regulations; and

(iii) the filing date of the subsequent application is not later than the date of the expiration of the priority period calculated from the filing date of the earliest application whose priority is claimed.

(2) *[Delayed Filing of the Subsequent Application]* A Contracting Party shall provide that, where an application ("the subsequent application") which claims or could have claimed the priority of an earlier application has a filing date which is later than the date on which the priority period expired, but within the time limit prescribed in the Regulations, the Office shall restore the right of priority, if:

(i) a request to that effect is made to the Office in accordance with the requirements prescribed in the Regulations;

(ii) the request is filed within the time limit prescribed in the Regulations;

(iii) the request states the reasons for the failure to comply with the priority period; and

(iv) the Office finds that the failure to file the subsequent application within the priority period occurred in spite of due care required by the circumstances having been taken or, at the option of the Contracting Party, was unintentional.

(3) *[Fees]* A Contracting Party may require that a fee be paid in respect of a request under paragraph (1) and in respect of a request under paragraph (2).

(4) *[Evidence]* A Contracting Party may require that a declaration or other evidence in support of the reasons referred to in paragraph (2)(iii) be filed with the Office within a time limit fixed by the Office.

(5) *[Opportunity to Make Observations in Case of Intended Refusal]* A request under paragraph (1) or (2) may not be refused, totally or in part, without the requesting party being given the opportunity to make observations on the intended refusal within a reasonable time limit.

Article 17

Request for Recording of a License or a Security Interest

(1) *[Requirements Concerning the Request for Recording of a License]* Where the law of a Contracting Party provides for the recording of a license with its Office, that Contracting Party may require that the request for recording:

(i) be filed in accordance with the requirements prescribed in the Regulations;

and

(ii) be accompanied by the supporting documents prescribed in the Regulations.

(2) *[Fees]* In respect of the recording of a license, the Office may require the payment of a fee.

(3) *[Single Request]* A single request shall be sufficient even where the license relates to more than one registration, provided that the registration numbers of all registrations concerned are indicated in the request, the holder and the licensee are the same for all registrations, and the request indicates the scope of the license with respect to all registrations.

(4) *[Prohibition of Other Requirements]* (a) No requirement other than those referred to in paragraphs (1) to (3) and in Article 12 may be demanded in respect of the recording of a license with the Office. In particular, the following may not be required:

(i) the furnishing of the registration certificate of the industrial design which is the subject of the license;

(ii) an indication of the financial terms of the license contract.

(b) Subparagraph (a) is without prejudice to any obligations existing under the law of a Contracting Party concerning the disclosure of information for purposes other than the recording of the license.

(5) *[Evidence]* It may be required that evidence be furnished to the Office where the Office may reasonably doubt the veracity of any indication contained in the request, or in any supporting document.

(6) *[Requests Relating to Applications]* Paragraphs (1) to (5) shall apply, *mutatis mutandis*, to requests for recording of a license in respect of an application, where the law of a Contracting Party provides for such recording.

(7) *[Request for Recording of a Security Interest]* With the exception of paragraph (4)(a)(ii), paragraphs (1) to (5) shall apply, *mutatis mutandis*, to requests for recording of a security interest in respect of an application or registration.

Article 18
Request for Amendment or Cancellation of the Recording of a License or a Security Interest

(1) *[Requirements Concerning the Request for Amendment or Cancellation of the Recording of a License]* Where the law of a Contracting Party provides for the recording of a license with its Office, that Contracting Party may require that the request for amendment or cancellation of the recording of a license:

- (i) be filed in accordance with the requirements prescribed in the Regulations;
- and
- (ii) be accompanied by the supporting documents prescribed in the Regulations.

(2) *[Requirements Concerning the Request for Cancellation of the Recording of a Security Interest]* Paragraph (1) shall apply, *mutatis mutandis*, to requests for cancellation of the recording of a security interest.

(3) *[Other Requirements]* Article 17(2) to (7) shall apply, *mutatis mutandis*, to requests for amendment or cancellation of the recording of a license and to requests for cancellation of the recording of a security interest.

Article 19
Effects of the Non-Recording of a License

(1) *[Validity of the Registration and Protection of the Industrial Design]* The non-recording of a license with the Office or with any other authority of a Contracting Party shall not affect the validity of the registration of the industrial design which is the subject of the license, nor the protection of that industrial design.

(2) *[Certain Rights of the Licensee]* A Contracting Party may not require the recording of a license as a condition for any right that the licensee may have under the law of that Contracting Party to join infringement proceedings initiated by the holder or to obtain, by way of such proceedings, damages resulting from an infringement of the industrial design which is the subject of the license.

Article 20
Indication of the License

Where the law of a Contracting Party requires an indication that the industrial design is used under a license, full or partial non-compliance with that requirement shall not affect the validity of the registration of the industrial design which is the subject of the license, nor the protection of that industrial design.

Article 21
Request for Recording of a Change in Ownership

(1) *[Requirements Concerning the Request for Recording]* (a) Where there is a change in the person of the holder, a Contracting Party shall accept that a request for the recording of the change be made either by the holder or by the new owner.

(b) A Contracting Party may require that the request contain some, or all, of the indications prescribed in the Regulations.

(2) *[Requirements Concerning Supporting Documents for Recording of a Change in Ownership]* (a) Where the change in ownership results from a contract, a Contracting Party may require that the request be accompanied, at the option of the requesting party, by one of the elements prescribed in the Regulations.

(b) Where the change in ownership results from a merger, a Contracting Party may require that the request be accompanied by a copy of a document, which originates from a competent authority and evidences the merger, such as a copy of an extract from a register of commerce, and that that copy be certified by the authority which issued the document or by a notary public or any other competent public authority, as being in conformity with the original document.

(c) Where there is a change in one or more, but not all, of several co-holders, and such change in ownership results from a contract or a merger, a Contracting Party may require that any co-holder in respect of which there is no change in ownership give its express consent to the change in ownership, in a document signed by such co-holder.

(d) Where the change in ownership does not result from a contract or a merger but from another ground, for example, by operation of law or a court decision, a Contracting Party may require that the request be accompanied by a copy of a document evidencing the change and that that copy be certified as being in conformity with the original document by the authority which issued the document, or by a notary public or any other competent public authority.

(3) *[Fees]* A Contracting Party may require that, in respect of the request, a fee be paid to the Office.

(4) *[Single Request]* A single request shall be sufficient even where the change relates to more than one registration, provided that the holder and the new owner are the same for each registration, and that the numbers of all registrations concerned are indicated in the request.

(5) *[Change in the Ownership of an Application]* Paragraphs (1) to (4) shall apply, *mutatis mutandis*, where the change in ownership concerns an application, provided that, where the application number of the application concerned has not yet been issued or is not known to the applicant or its representative, the request identifies the application as prescribed in the Regulations.

(6) *[Prohibition of Other Requirements]* No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (5) and in Article 12 be complied with in respect of a request for the recording of a change in ownership.

(7) *[Evidence]* A Contracting Party may require that evidence, or further evidence where paragraph (2)(b) or (d) applies, be furnished to the Office where the Office reasonably doubts the veracity of any indication contained in the request or in any document referred to in the present Article.

Article 22

Changes in Names or Addresses

(1) *[Changes in the Name or Address of the Holder]* (a) Where there is no change in the person of the holder but there is a change in its name and/or address, each Contracting Party shall accept that a request for the recording of the change by the Office be made by the holder in a communication indicating the registration number of the registration concerned and the change to be recorded.

(b) A Contracting Party may require that the request contain some, or all, of the indications prescribed in the Regulations.

(c) A Contracting Party may require that, in respect of the request, a fee be paid to the Office.

(d) A single request shall be sufficient even where the change relates to more than one registration, provided that the registration numbers of all registrations concerned are indicated in the request.

(2) *[Change in the Name or Address of the Applicant]* Paragraph (1) shall apply, *mutatis mutandis*, where the change concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or its representative, the request otherwise identifies that application as prescribed in the Regulations.

(3) *[Change in the Name or Address of the Representative or in the Address for Service]* Paragraph (1) shall apply, *mutatis mutandis*, to any change in the name or address of the representative, if any, and to any change relating to the address for service, if any.

(4) *[Prohibition of Other Requirements]* No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (2) and in Article 12 be complied with in respect of the request referred to in this Article. In particular, the furnishing of any certificate concerning the change may not be required.

(5) *[Evidence]* A Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt the veracity of any indication contained in the request.

Article 23 Correction of a Mistake

(1) *[Request]* (a) Where an application, a registration or any request communicated to the Office in respect of an application or a registration contains a mistake, not related to search or substantive examination, which is correctable by the Office under the applicable law, the Office shall accept that a request for correction of that mistake in the records and publications of the Office be made in a communication to the Office signed by the applicant or holder.

(b) A Contracting Party may require that the request be accompanied by a replacement part or part incorporating the correction or, where paragraph (3) applies, by such a replacement part or part incorporating the correction for each application and registration to which the request relates.

(c) A Contracting Party may require that the request be subject to a declaration by the requesting party stating that the mistake was made in good faith.

(d) A Contracting Party may require that the request be subject to a declaration by the requesting party stating that the said request was made without undue delay or, at the option of the Contracting Party, that it was made without intentional delay, following the discovery of the mistake.

(2) *[Fees]* (a) Subject to subparagraph (b), a Contracting Party may require that a fee be paid in respect of a request under paragraph (1).

(b) The Office shall correct its own mistakes, *ex officio* or upon request, for no fee.

(3) *[Single Request]* Article 21(4) shall apply, *mutatis mutandis*, to requests for correction of a mistake, provided that the mistake and the requested correction are the same for all applications and registrations concerned.

(4) *[Evidence]* A Contracting Party may only require that evidence in support of the request be filed with the Office where the Office may reasonably doubt that the alleged mistake is in fact a mistake, or where it may reasonably doubt the veracity of any matter contained in, or of any document filed in connection with, the request for correction of a mistake.

(5) *[Prohibition of Other Requirements]* No Contracting Party may require that formal requirements other than those referred to in paragraphs (1) to (4) be complied with in respect of the request referred to in paragraph (1), except where otherwise provided for by this Treaty or prescribed in the Regulations.

(6) *[Exclusions]* A Contracting Party may exclude the application of this Article in respect of any mistake which must be corrected in that Contracting Party under a procedure for reissue of the registration.

Article 24

Technical Assistance and Capacity Building

(1) *[Principles]* Technical assistance shall

- (i) be development-oriented, demand-driven, transparent, targeted and adequate for the strengthening of the capacity of beneficiary countries to implement the Treaty;
- (ii) take into account the priorities and the specific needs of receiving countries for enabling the users to take full advantage of the provisions of the Treaty.

(2) *[Technical Assistance and Capacity Building]* (a) Technical assistance and capacity building activities provided under this Treaty shall be for the implementation of this Treaty and, where requested, include assistance with:

- (i) establishing the required legal framework and revising administrative practices and procedures of design registration authorities;
- (ii) building up the necessary capacity of the Offices, including but not limited to providing training of human resources, technological support and awareness raising.

(b) The Organization is requested to provide, subject to the WIPO Financial Regulations and Rules, financing for technical assistance and capacity building for the implementation of the Treaty in accordance with paragraphs (1), (2)(a), (3)(a) and Article 26(1)(c) and 26(2)(vi). Moreover, the Organization is encouraged to enter into agreements with international financing organizations, intergovernmental organizations and governments of receiving countries in order to provide financial support for technical assistance pursuant to this Treaty.

(3) *[Other Provisions]* (a) Contracting Parties are encouraged to participate in the Organization's digital libraries for registered designs, to which the International Bureau shall facilitate access. Contracting Parties are further encouraged to communicate published registered design information through such systems. The International Bureau shall support Contracting Parties in their efforts to exchange information through those systems. The International Bureau is requested to facilitate access to relevant digital libraries of Offices.

(b) Contracting Parties to this Treaty may establish a fee reduction system to the benefit of applicants.

Article 25 Regulations

- (1) *[Content]* (a) The Regulations annexed to this Treaty provide rules concerning:
- (i) matters which this Treaty expressly provides to be prescribed in the Regulations;
 - (ii) any details useful in the implementation of the provisions of this Treaty;
 - (iii) any administrative requirements, matters or procedures.
- (b) The Regulations also provide for the publication of Model International Forms to be established by the Assembly.
- (2) *[Amending the Regulations]* Subject to paragraph (3), any amendment of the Regulations shall require three-fourths of the votes cast.
- (3) *[Requirement of Unanimity]* (a) The Regulations may specify provisions of the Regulations which may be amended only by unanimity.
- (b) Any amendment of the Regulations resulting in the addition of provisions to, or the deletion of provisions from, the provisions specified in the Regulations pursuant to subparagraph (a) shall require unanimity.
- (c) In determining whether unanimity is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.
- (4) *[Conflict Between the Treaty and the Regulations]* In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail.

Article 26 Assembly

- (1) *[Composition]* (a) The Contracting Parties shall have an Assembly.
- (b) Each Contracting Party shall be represented in the Assembly by one delegate, who may be assisted by alternate delegates, advisors and experts. Each delegate may represent only one Contracting Party.
- (c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the Organization to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or Least Developed Countries or that are countries in transition to a market economy.
- (2) *[Tasks]* The Assembly shall
- (i) deal with matters concerning the development of this Treaty;
 - (ii) establish Model International Forms, referred to in Article 25(1)(b);
 - (iii) amend the Regulations;
 - (iv) determine the conditions for the date of application of each amendment referred to in item (iii);

(v) monitor, at every ordinary session, the technical assistance provided for implementation of this Treaty;

(vi) request the International Bureau, with a view to facilitating the implementation of this Treaty, to provide technical assistance, in particular to developing countries and Least Developed Countries, in accordance with Article 24;

(vii) perform such other functions as are appropriate to implementing the provisions of this Treaty.

(3) *[Quorum]* (a) One-half of the members of the Assembly which are States shall constitute a quorum.

(b) Notwithstanding subparagraph (a), if, in any session, the number of the members of the Assembly which are States and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect, provided that at the same time the required majority still obtains.

(4) *[Taking Decisions in the Assembly]* (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

(ii) any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and *vice versa*. In addition, no such intergovernmental organization shall participate in the vote if any one of its Member States party to this Treaty is a Member State of another such intergovernmental organization and that other intergovernmental organization participates in that vote.

(5) *[Majorities]* (a) Subject to Article 25(2) and (3), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) In determining whether the required majority is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.

(6) *[Sessions]* The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(7) *[Rules of Procedure]* The Assembly shall establish its own rules of procedure, including rules for the convocation of extraordinary sessions.

Article 27

International Bureau

(1) *[Administrative Tasks]* (a) The International Bureau shall perform the administrative tasks concerning this Treaty.

(b) In particular, the International Bureau shall prepare the meetings and provide the Secretariat of the Assembly and of such committees of experts and working groups as may be established by the Assembly.

(2) *[Meetings Other than Sessions of the Assembly]* The Director General shall convene any committee and working group established by the Assembly.

(3) *[Role of the International Bureau in the Assembly and Other Meetings]* (a) The Director General and persons designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly.

(b) The Director General or a staff member designated by the Director General shall be *ex officio* Secretary of the Assembly, and of the committees and working groups referred to in subparagraph (a).

(4) *[Conferences]* (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with Member States of the Organization, intergovernmental organizations and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by the Director General shall take part, without the right to vote, in the discussions at revision conferences.

(5) *[Other Tasks]* The International Bureau shall carry out any other tasks assigned to it in relation to this Treaty.

Article 28

Revision

This Treaty may only be revised by a diplomatic conference. The convocation of any diplomatic conference shall be decided by the Assembly.

Article 29

Becoming Party to the Treaty

(1) *[Eligibility]* The following entities may sign and, subject to paragraphs (2) and (3) and Article 30(1) and (3), become party to this Treaty:

(i) any State member of the Organization in respect of which industrial designs may be registered with its own Office;

(ii) any intergovernmental organization which maintains an Office in which industrial designs may be registered with effect in the territory in which the constituting treaty of the intergovernmental organization applies, in all its Member States or in those of its Member States which are designated for such purpose in the relevant application, provided that all the Member States of the intergovernmental organization are members of the Organization;

(iii) any State member of the Organization in respect of which industrial designs may be registered only through the Office of another specified State that is a member of the Organization;

(iv) any State member of the Organization in respect of which industrial designs may be registered only through the Office maintained by an intergovernmental organization of which that State is a member;

(v) any State member of the Organization in respect of which industrial designs may be registered only through an Office common to a group of States members of the Organization.

(2) *[Ratification or Accession]* Any entity referred to in paragraph (1) may deposit

(i) an instrument of ratification, if it has signed this Treaty;

(ii) an instrument of accession, if it has not signed this Treaty.

(3) *[Effective Date of Deposit]* The effective date of the deposit of an instrument of ratification or accession shall be,

(i) in the case of a State referred to in paragraph (1)(i), the date on which the instrument of that State is deposited;

(ii) in the case of an intergovernmental organization, the date on which the instrument of that intergovernmental organization is deposited;

(iii) in the case of a State referred to in paragraph (1)(iii), the date on which the following condition is fulfilled: the instrument of that State has been deposited and the instrument of the other specified State has been deposited;

(iv) in the case of a State referred to in paragraph (1)(iv), the date applicable under item (ii), above;

(v) in the case of a State member of a group of States referred to in paragraph (1)(v), the date on which the instruments of all the States members of the group have been deposited.

Article 30 **Entry into Force;** **Effective Date of Ratifications and Accessions**

(1) *[Instruments to Be Taken into Consideration]* For the purposes of this Article, only instruments of ratification or accession that are deposited by entities referred to in Article 29(1) and that have an effective date according to Article 29(3) shall be taken into consideration.

(2) *[Entry into Force of the Treaty]* This Treaty shall enter into force three months after 15 States or intergovernmental organizations referred to in Article 29(1)(ii) have deposited their instruments of ratification or accession.

(3) *[Entry into Force of Ratifications and Accessions Subsequent to the Entry into Force of the Treaty]* Any entity not covered by paragraph (2) shall become bound by this Treaty three months after the date on which it has deposited its instrument of ratification or accession.

Article 31

Reservations

- (1) *[Reservation on Article 5(2)(b)]* Any State or intergovernmental organization may declare through a reservation that, notwithstanding Article 5(2)(b), its applicable law at the date it becomes a party to this Treaty does not allow the applicant or other interested person who has neither a domicile nor a real and effective industrial or commercial establishment in the territory of that State or intergovernmental organization to act for himself/herself before the Office for the filing of an application, for the purposes of the filing date.
- (2) *[Reservations on Articles 7, 10(1), 16(2) and/or 19(2)]* Any State or intergovernmental organization whose applicable law at the date it becomes a party to this Treaty does not comply with Articles 7, 10(1), 16(2) and/or 19(2) may declare through a reservation that it shall not be bound by Articles 7, 10(1), 16(2), and/or 19(2).
- (3) *[Modalities]* Any reservation under paragraphs (1) or (2) shall be made in a declaration accompanying the instrument of ratification of, or accession to, this Treaty of the State or intergovernmental organization making the reservation.
- (4) *[Withdrawal]* Any reservation under paragraphs (1) or (2) may be withdrawn at any time.
- (5) *[Prohibition of Other Reservations]* No reservation to this Treaty other than the reservations allowed under paragraphs (1) or (2) shall be permitted.

Article 32

Denunciation of the Treaty

- (1) *[Notification]* Any Contracting Party may denounce this Treaty by notification addressed to the Director General.
- (2) *[Effective Date]* Denunciation shall take effect one year from the date on which the Director General has received the notification. It shall not affect the application of this Treaty to any application pending or any industrial design registered in respect of the denouncing Contracting Party at the time of the expiration of the said one-year period, provided that the denouncing Contracting Party may, after the expiration of the said one-year period, discontinue applying this Treaty to any registration as from the date on which that registration is due for renewal.

Article 33

Languages of the Treaty; Signature

- (1) *[Original Texts; Official Texts]* (a) This Treaty shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.
- (b) An official text in a language not referred to in subparagraph (a) that is an official language of a Contracting Party shall be established by the Director General after consultation with the said Contracting Party and any other interested Contracting Party.
- (2) *[Time Limit for Signature]* This Treaty shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 34
Depositary

The Director General shall be the depositary of this Treaty.

THE NEXT 100 YEARS OF INTERNATIONAL INTELLECTUAL PROPERTY: INTEGRATING HUMAN RIGHTS AND CORPORATE SOCIAL RESPONSIBILITY ♦ ▲

JULIA JANEWA OSEI-TUTU*

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INTRODUCTION

International intellectual property law has evolved significantly over the past several years. Since the implementation of the World Trade Organization Agreement on Trade-Related Intellectual Property Rights, the effort has been on increasing standards of protection for intellectual property, as well as on the enforcement of intellectual property rights at borders and within national systems.¹ So, what will the future look like?

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*J.D. Queen's Law, LL.M. McGill Law. Professor of Law, Florida International University College of Law. I am grateful to Mary Grace Longoria for her excellent research assistance and to Olivia Yoon and the editors of the *Cardozo Arts & Entertainment Law Journal* for their thorough and detailed editorial work. All errors and omissions are mine.

¹ See Sarah Wasserman Rajec, *The Harmonization Myth in International Intellectual Property Law*, 62 ARIZ. L. REV. (2020) 735, 763 ("The proliferation of bilateral and multilateral treaties following the TRIPs Agreement reflects an agenda of rights maximization. Countries engaged in treaty negotiation have abandoned harmonizing measures in favor of maximizing measures in a

It is impossible to predict what the next hundred years will bring. But, along with rising standards and increased protection, international intellectual property has shifted to incorporate societal concerns. This is partly due to the increased recognition for corporate social responsibility and a greater focus on human rights considerations.² My prediction is that this trend is likely to continue.

International agreements on intellectual property are not new. The Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property, for example, date back to the 1800s.³ But the landscape for international intellectual property changed significantly when the World Trade Organization was created. That is the starting point for the push towards increased intellectual property protections. At the same time, it was the genesis for greater commentary and thinking about the beneficial or detrimental effects of intellectual property rights on human life.

The World Trade Organization (WTO), which evolved from the General Agreement on Tariffs and Trade, had nearly two-hundred member states at the time it was established in 1995.⁴ It is a multilateral organization to which most of the world's nations belong, and which has a mechanism for settling and enforcing disputes. Under the WTO, it is possible to impose consequences for members that fail to comply with the rules. The World Intellectual Property Organization (WIPO), by comparison, does not have a similar ability to enforce specific intellectual property obligations.⁵ As such the WTO and the agreements its members adopted are important. While there is some flexibility in how member

number of circumstances. One such area is in intellectual property rights duration. Even as the TRIPS Agreement was under negotiation, the EU was negotiating a directive that would require a term of property rights to last twenty years longer than the duration required by the Berne Convention, which was ultimately incorporated into the TRIPS Agreement.”).

² The business and human rights framework is based on norms rather than definitive legal obligations. See Jean-Marie Kamatali, *The New Guiding Principles on Business and Human Rights' Contribution in Ending the Divisive Debate over Human Rights Responsibilities of Companies: Is It Time for an ICJ Advisory Opinion?*, 20 CARDOZO J. INT'L & COMP. L. 437, 441 (2012) (“Further, this Article argues that limiting enforcement of the corporate responsibility to respect human rights to general social norms and market expectations, as the SRSB has so far advocated, is not sustainable and offers little to the victims of corporate human rights violations. Until the question of whether international human rights law directly imposes legal obligations on corporations has been authoritatively answered, the divisive debate over companies' human rights responsibilities is unlikely to end. Thus, this Article, in search of the authoritative global answer to this quandary, argues for an advisory opinion by the International Court of Justice (ICJ) to address this fundamental question of international law.” (footnotes omitted)).

³ Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, 828 U.N.T.S. 221 [hereinafter Berne Convention]; Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, 828 U.N.T.S. 305 [hereinafter Paris Convention].

⁴ See Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154 (1994) [hereinafter WTO Agreement].

⁵ See Convention Establishing the World Intellectual Property Organization, Stockholm, July 14 1967 as am. Sept. 28, 1979, available at <https://www.wipo.int/wipolex/en/treaties/textdetails/12412> [<https://perma.cc/HHG5-G4WL>].

states choose to implement their WTO obligations, they must still comply with those agreed obligations.⁶ This is one of the reasons the WTO has played a critical role in international intellectual property law, even though it is an organization with a trade mandate and not an intellectual property-related mandate.

The North-South Divide in International IP

TRIPS was a significant achievement for producers of goods and services that are protected by intellectual property rights. Incorporating intellectual property into the trade regime meant that, for the first time in history, there would be harmonized enforceable minimum standards for intellectual property protection in most of the world's nations. Even though the TRIPS Agreement provisions were certain to help multinational corporations that were engaged in cross-border trade of goods or services, the advocates for trade-related intellectual property rights promised that everyone would benefit from increased intellectual property standards.⁷ There would be more efficient trade, which would increase opportunities for everyone. These harmonized intellectual property standards would also result in higher levels of foreign direct investment and greater rates of technology transfer. While the global north claimed more intellectual property rights would lead to improved outcomes for developing nations, many nations of the global south remained skeptical and expressed significant concerns over the associated costs.⁸ Nearly thirty years later, many of these promises have failed to materialize for developing and least developed countries.⁹ Rather, it is industrialized nations and corporations from the developed world who seem to be the primary beneficiaries of the current system.

A brief look at some of the concerns and critiques that came with the establishment of the WTO and the implementation of the 1995 TRIPS Agreement will help in understanding why there will be a continued and growing focus on human rights and corporate social responsibility.

⁶ 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, art. 1 [hereinafter TRIPS Agreement].

⁷ See generally Robert M. Sherwood, *The Trips Agreement: Implications for Developing Countries*, 37 IDEA 491, 491 (1997) ("Developing countries can expect benefits of many kinds as they fully implement the TRIPS Agreement. This study identifies those benefits and their corresponding financial and other costs. It also identifies means by which developing countries may reduce those costs and enhance those benefits." (footnote omitted)).

⁸ See, e.g., Rochelle C. Dreyfuss & Andreas F. Lowenfeld, *Two Achievements of the Uruguay Round: Putting TRIPS and Dispute Settlement Together*, 37 VA. J. INT'L L. 275, 302 (1997) (suggesting that that TRIPS could have a significantly different impact on developing countries than the other WTO Agreements—in particular, the cost of setting up copyright, trademark, and patenting offices, as well as the costs involved in monitoring and enforcing intellectual property rights is significant).

⁹ Peter K. Yu, *TRIPS and Its Achilles' Heel*, 18 J. INTELL. PROP. 479, 490–92 (2011).

Several scholars have observed that the structure of international intellectual property is one that favors developed countries, which are also the intellectual property producing nations.¹⁰ There have been numerous critiques of the current intellectual property system. These include that this system is inequitable because it is aimed at wealth generation for industrialized countries, that it is inappropriate for developing countries, that it limits access to much needed medicines, and that it limits access to knowledge.¹¹ The TRIPS regime has also been the source of various issues, such as patent-related bio-piracy and the misappropriation of cultural heritage.¹²

It is glaringly apparent that the international intellectual property regime has been merely accommodating developing and least developed countries, and that it was not designed to help them thrive. One need only look at the main provisions of the TRIPs Agreement, along with the provisions that were adopted to accommodate some of the needs of developing countries. For example, the TRIPS Agreement included a transition period for developing and least developed countries before they would have to implement their intellectual property obligations under the agreement. All countries had one year to implement their TRIPS obligations, but developed countries had an additional four-year delay.¹³

Least developed countries members, for example, initially had a delayed implementation period of ten years and developed countries were supposed to provide incentives to encourage technology transfer.¹⁴ The ten-year delay period for least developed countries was set to expire in 2005, but it was extended to 2013, and again to 2021.¹⁵ Clearly, even decades later, these nations still struggle to comply with the relatively high intellectual property standards in TRIPS. The specific

¹⁰ Donald P. Harris, *Carrying a Good Joke Too Far: TRIPS and Treaties of Adhesion*, 27 U. PA. J. INT'L ECON. L. 681, 685–86 (2006) (asserting that since TRIPS inception, many have concluded that the Agreement is unfair to developing countries); Yu, *supra* note 9, at 487–88 (In the area of intellectual property enforcement, for instance, higher standards will require developing countries to divert scarce resources away from other equally important, if not more important, needs—“such as the provision of clean drinking water, food, shelter, electricity, schools, and basic healthcare.”)

¹¹ See Frederick M. Abbott, *TRIPS in Seattle: The Not-So-Surprising Failure and the Future of the TRIPS Agenda*, 18 BERKELEY J. INT'L L. 165, 171 (2000) (noting the patent related health concerns of developing country members).

¹² Lawrence R. Helfer, *Towards a Human Rights Framework for Intellectual Property*, 40 U.C. DAVIS L. REV. 971, 987–89 (2007); Charles R. McManis, *Intellectual Property, Genetic Resources and Traditional Knowledge Protection: Thinking Globally, Acting Locally*, 11 CARDOZO J. INT'L & COMP. L. 547, 548–49 (2003) (discussing the North-South division and the negative reaction of farmers in India to the TRIPS Agreement).

¹³ TRIPS Agreement, *supra* note 6, art. 65 (Developing country members had to comply with national treatment, most favored nations treatment, and WIPO Agreements—“A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.”).

¹⁴ TRIPS Agreement, *supra* note 6, art. 66.

¹⁵ See *WTO Members Agree to Extend Transition Period for LDCs until July 1, 2034*, WTO (June 29, 2021), https://www.wto.org/english/news_e/news21_e/trip_30jun21_e.htm [https://perma.cc/35PB-5S5U].

pharmaceuticals transition period, which was extended for seventeen years at the end of 2015, exempts these countries from obligations under the TRIPS agreement related to patents or other intellectual property rights on pharmaceutical products and clinical data until 2033.¹⁶

INTEGRATING SOCIAL ISSUES: CORPORATE SOCIAL RESPONSIBILITY,
HUMAN DEVELOPMENT, AND TRADITIONAL KNOWLEDGE.

Health and Access to Medicines

Ten years after TRIPS Agreement was implemented, the WTO member states issued the Doha Declaration on the TRIPS Agreement and Public Health (the “Doha Declaration”).¹⁷ This was the first concrete response to concerns about the impact of harmonized intellectual property standards on society. The WTO is a trade organization, and the purpose of the TRIPS Agreement is to facilitate the trade in intellectual property protected goods while minimizing infringement. But early on, concerns were raised about access to patent protected medicines and the implications for the human right to health. For instance, prior to the TRIPS Agreement, some countries made a domestic policy choice to prohibit patents on medicines. The TRIPS Agreement removed this possibility by requiring patents for all fields of technology.¹⁸

The Doha Declaration played a critical role in injecting human rights and social concerns into the international intellectual property framework.¹⁹ Importantly, it clarified that intellectual property rights should not interfere with public health.²⁰ It has since been relied upon in

¹⁶ TRIPS Agreement, *supra* note 6; *Poorest Countries’ Extended Intellectual Property Transition: Time-Limited or Indefinite?*, WTO (Mar. 5–6, 2013), https://www.wto.org/english/news_e/news13_e/trip_05mar13_e.htm [<https://perma.cc/XN4Y-C2EQ>]. See *WTO Members Agree to Extend Drug Patent Exemption for Poorest Members*, WTO (Nov. 6, 2015), https://www.wto.org/english/news_e/news15_e/trip_06nov15_e.htm [<https://perma.cc/KRW5-HDPQ>] (“In addition to this general TRIPS provision, the specific pharmaceuticals transition period, dating to 2001 but extended to 2033, exempts LDCs from obligations under the TRIPS agreement related to patents or other intellectual property rights on pharmaceutical products and clinical data.”).

¹⁷ Declaration on the TRIPS Agreement and Public Health, WTO Doc. WT/MIN(01)/DEC/2 (Nov. 14, 2001) [hereinafter *Doha Declaration*].

¹⁸ TRIPS Agreement, *supra* note 6, art. 27.1 (“Subject to the provisions of paragraphs 2 and 3, 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. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.”) (footnote omitted)).

¹⁹ Doha Declaration, *supra* note 17, ¶ 1 (“We recognize the gravity of the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics.”).

²⁰ *Id.* ¶ 4 (“We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members’ right to protect public health and, in particular, to promote access to medicines for all.”).

conflicts involving intellectual property rights and access to medicines. For instance, in the dispute regarding the seizure of generic medicines in transit, the Doha Declaration was referenced as part of the argument against the European Union. The Doha Declaration was used to support the position that the EU should not interfere with access to medicines by seizing generic medicines in transit between two countries where the medicines had not been patented. In addition to the technical intellectual property argument, India referred to the Doha Declaration and to international human rights instruments to make an argument in favor of the human right to health.²¹ Concerns about public health and patents came to the forefront during the Covid-19 pandemic. The Doha Declaration played an important role here as well. The corresponding demand for a Covid intellectual property waiver highlighted role of patents, whether justified or not, in access to medicines.²²

Cultural Intellectual Property and Traditional Knowledge

The TRIPS Agreement was significant for geographical indications because it was the first time that this type of intellectual property was protected in a widely adopted multilateral agreement, which meant that geographical indications became a new norm in international intellectual property. By comparison, intangible cultural heritage in the form of traditional cultural expression and traditional knowledge and traditional cultural expressions have largely been protected through *sui generis* rights, based on national legislation.²³ There is now some international movement on the disclosure of genetic resources in patent applications. This is significant because for several years there was no movement on cultural intellectual property, such as traditional knowledge and

²¹ See Request for Consultations by India, European Union and a Member State—Seizure of Generic Drugs in Transit, WTO Doc. WT/DS408/1/G/L/921/IP/D/28 (May 19, 2010) (“India considers further that the measures at issue also have a serious adverse impact on the ability of developing and least-developed country members of the World Trade Organization to protect public health and to provide access to medicines for all. Accordingly, the provisions of the TRIPS Agreement referred to above must be interpreted and implemented in light of the objectives and principles set forth in Articles 7 and 8 of the TRIPS Agreement, the Doha Ministerial Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 and in the light of Article 12(1) of the International Covenant on Economic, Social and Cultural Rights, which recognizes the right of all persons to the enjoyment of the highest attainable standard of physical and mental health.”); Request for Consultations by Brazil, European Union and a Member State—Seizure of Generic Drugs in Transit, WTO Doc. WT/DS409/1 (May 19, 2010).

²² See TRIPS Council Welcomes MC12 TRIPS Waiver Decision, Discusses Possible Extension, WTO (July 6, 2022), https://www.wto.org/english/news_e/news22_e/trip_08jul22_e.htm [<https://perma.cc/2JTS-73BH>]; WTO Ministerial Decision on the TRIPS Agreement, WT/Min (22) 30/WT/L/41 (June 17, 2022).

²³ WORLD INTELLECTUAL PROP. ORG., CONSOLIDATED ANALYSIS OF THE LEGAL PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS/EXPRESSIONS OF FOLKLORE 35–37 (2003), *available at* https://www.wipo.int/edocs/pubdocs/en/tk/785/wipo_pub_785.pdf [<https://perma.cc/WQG6-8LGZ>] [hereinafter CONSOLIDATED ANALYSIS FOLKLORE].

traditional cultural expressions, which are largely sought by countries from the developing south.

Geographical indications are names that identify a good as having some quality, reputation, or characteristic that is “essentially attributable” to the geographic location.²⁴ In addition to regular geographical indications, which are similar to geographic trademarks, the TRIPS Agreement protects specialized geographic names for wines and spirits, even if there is no risk of public confusion.²⁵ Moreover, unlike trademarks, patents, or copyrights, geographical indications have no specified time limit.²⁶ To further expand geographical indications, WTO members committed to expand the higher level of protection, which is currently only available for wines and spirits, to other goods.²⁷ There has not been much movement on expanding the higher level of protection to goods other than wines and spirits, but the European Union recently created a new geographical indication classification for craft & industrial products, which are a form of cultural intellectual property or intangible cultural heritage.²⁸

Although they were not protected under the TRIPS Agreement, traditional knowledge and traditional cultural expressions require international protection so that domestic protection for cultural intellectual property can be enforced across borders.²⁹ Classic intellectual property rights, such as copyright, are not well suited to protecting

²⁴ TRIPS Agreement, *supra* note 6, art. 23.

²⁵ *Id.* art. 24.

²⁶ See article 18 for trademark term of protection, article 26 for industrial designs term limit, and article 33 for patent term of protection. *Id.* art 18, 26, 33. The copyright term of protection is found in the Berne Convention, which is incorporated by reference through article 9. *Id.* art. 9. The provisions on geographical indications, in articles 22 to 24, contain no term limit. *Id.* art 22–24.

²⁷ *Id.* art. 24.

²⁸ *Proposal for a Regulation of the European Parliament and of the Council on Geographical Indication Protection for Craft and Industrial Products and Amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754*, COM (2002) 174 final (Apr. 13, 2022), available at https://ec.europa.eu/growth/publications/regulation-geographical-indications-craft-and-industrial-products-documents_en [<https://perma.cc/8ESB-JFW9>].

²⁹ Srividhya Ragavan, *Protection of Traditional Knowledge*, 2 MINN. INTELL. PROP. REV. 1, 31–32 (2001) (“The Trade Related Intellectual Property Rights System (TRIPS), 1994 was the next major international development. Unfortunately, the World Trade Organization did not find it fit to include aspects relating to protection of traditional knowledge in TRIPS. On the one hand the importance of enforcing intellectual property rights to grant justice to the multinationals to ensure equal treatment was emphasized. On the other hand, that the knowledge of the indigenous people is being misused has been totally ignored. Considering that it is the western scientists who invent and multinationals which invest, the human rights perspectives in developing countries and the miseries on account of increased drug prices amounting to dying populations were totally ignored. The indigenous people felt that the different set of logics and laws were applied to the art and the works of the indigenous people.” (footnote omitted)). See also WORLD INTELLECTUAL PROP. ORG., BACKGROUND BRIEF – NO. 2: THE WIPO INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (2016), available at <https://tind.wipo.int/record/28829> [<https://perma.cc/J68L-HD9E>]; Chidi Oguamanam, *Indigenous Peoples’ Rights at the Intersection of Human Rights and Intellectual Property Rights*, 18 MARQ. INTELL. PROP. L. REV. 261, 274, 275–76 (2014).

traditional cultural expressions because of its focus on originality, individual creatorship, the fixation requirement, and time limited protection.³⁰ The originality requirement, for example, is challenging for indigenous communities seeking to protect pre-existing traditional cultural expressions or folklore.³¹ The closest form of protection for cultural intellectual property is probably geographical indications. The push to protect traditional knowledge is likely to continue, in part based on human rights and human development. It is notable that the WTO and WIPO both expressly address how their work connects to human development, such as the elimination of poverty which is the United Nations Sustainable Development Goal 1 (SDG 1).³² WIPO has its own Development Agenda and has also explained how its intellectual property activities connect to the United Nations 2030 Agenda for Sustainable Development.³³

Corporate Social Responsibility and Intellectual Property

We have also seen developments in relation to race and intellectual property in the United States. For example, the *Matal v. TAM* decision from the U.S. Supreme Court held that the disparaging marks provision of the U.S. Trademark law, the Lanham Act, was unconstitutional.³⁴ Nonetheless, we have seen the fall of certain disparaging marks such as the pancake syrup mark “Aunt Jemima” and the football team mark “Redskins.”³⁵ It is no longer sufficient to stick to the narrow criteria of

³⁰ CONSOLIDATED ANALYSIS FOLKLORE, *supra* note 23, at 36–37.

³¹ *Id.* at 38. See also WORLD INTELLECTUAL PROP. ORG., INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE, THIRTY-SEVENTH SESSION, GENEVA, AUGUST 27 TO 31, 2018, *The Protection Of Traditional Cultural Expressions: Updated Draft Gap Analysis*, WIPO/GRTKF/IC/37/7, at 28 (July 6, 2018); CONSOLIDATED ANALYSIS FOLKLORE, *supra* note 23, at 44 (“The limited term of protection and the certain other features of copyright . . . may make copyright protection less attractive to indigenous peoples and traditional communities. In addition, divergences between the rights of a copyright holder and parallel customary responsibilities can cause difficulties for indigenous authors. Therefore, while copyright protection is possible in certain cases, it may not meet all the needs and objectives of indigenous peoples and traditional communities.”).

³² For a brief description of all seventeen goals, see *The 17 Goals*, UNITED NATIONS: DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, SUSTAINABLE DEVELOPMENT, <https://sdgs.un.org/goals> [<https://perma.cc/QYK2-XBCG>].

³³ See *Development Agenda for WIPO*, WORLD INTELLECTUAL PROP. ORG., <https://www.wipo.int/ip-development/en/agenda/> [<https://perma.cc/NY69-TSS9>]; WORLD INTELLECTUAL PROP. ORG., COMMITTEE FOR THE DEVELOPMENT OF INTELLECTUAL PROPERTY, TWENTY-FIRST SESSION, MAY 14–18, 2018, *Report on WIPO's Contribution to the Implementation of the Sustainable Development Goals and its Associated Targets*, WIPO/CDIP/21/10 (Mar. 26, 2018); WORLD INTELLECTUAL PROP. ORG., WIPO AND THE SUSTAINABLE DEVELOPMENT GOALS (2021), available at https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1061_2021.pdf [<https://perma.cc/M8P5-J7G5>].

³⁴ 137 S. Ct. 1744 (2017).

³⁵ Fady. J.G. Aoun, *The Belated Awakening of the Public Sphere to Racist Branding and Racist Stereotypes in Trademarks*, 61 IDEA 545, 549–51 (2021) (“Sustained counterpublic contestatory efforts by marginalized groups (and their supporters) in the public sphere and, in some cases, through trademark law had earlier laid the necessary groundwork that eventually forced the demise of time-honored stereotypically-racist trademarks. Icons of Black servitude embodied in

whether a mark is an indicator of source. Even without enforceable morality clauses, companies must think about the social implications of their intellectual property. The Redskins football team did not legally have to change their trademark to the Washington Football Team. Yet they responded to social pressures around the history of racist branding or insensitivity regarding the depiction of historically marginalized groups. Both the Redskins mark and the Aunt Jemima mark were legally sound, but the companies responded to soft norms and societal developments when they decided to rebrand.

Corporate social responsibility (CSR) as a norm of expected behavior for companies is an idea that has gained traction. This involves companies making decisions that are respectful of human rights, guided by the United Nations *Guidelines on Business and Human Rights*.³⁶ CSR requires, at a minimum, that corporations voluntarily respect and protect human rights, and that they remedy any human rights violations for which they are responsible.³⁷ Some commentators are skeptical about how much companies are committed to social responsibility or simply committed to it as a marketing ploy. Corporations are asked to do no harm, and their customers increasingly expect them not to do no harm but also to do good in the world. This evolution of CSR has been fortified with environmental, social and governance (ESG) factors, which go beyond the idea of corporate social responsibility to having concrete ways to measure and assess a company's environmental and social impact. ESG is emerging as the more popular framework because it gives stakeholders a "measured, quantifiable and criteria-led" report.³⁸

trademarks such as AUNT JEMIMA, UNCLE BEN, MRS BUTTERWORTHS, and CREAM OF WHEAT, and those of Native American or Inuit Canadian alterity, evident in the LAND O LAKES, ESKIMO PIE, Washington REDSKINS, Edmonton ESKIMOS, and Cleveland INDIANS trademarks were abandoned in quick succession. Similar battles were fought and won in the Antipodes against Allen's REDSKINS and CHICOS trademarks, and COON cheese, the latter's 'retirement' marking the culmination of a 20-year battle by Indigenous Australian social justice advocate Stephen Hagan. The decisive trigger for this long sought-after change, admittedly, had little to do with the finer points of trademark law. It had more to do with nervous owners of racist commercial symbols seeking to rid themselves of branding they now consider untenable in the wake of George Floyd's senseless custodial murder.").

³⁶ See Hum. Rts. Council, Rep. of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, U.N. Doc. A/HRC/17/31, ¶ 11 (Mar. 21, 2011) [hereinafter Guiding Principles on Business and Human Rights] ("Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.").

³⁷ *Id.*

³⁸ *What is ESG and is it Different to CSR: A Simple Guide*, SOCIAL GOOD CONNECT, <https://web.archive.org/web/20210427135605/https://socialgoodconnect.org/what-is-esg/>; Celesté Polley, *ESG vs. CSR: What's the Difference?*, THE SUSTAINABLE AGENCY (Feb. 10, 2022), <https://thesustainableagency.com/blog/esg-vs-csr/> [<https://perma.cc/UX6Z-TQBY>].

Socially Progressive Trips-Plus Agreements

Socially responsible and human-centered intellectual property is also showing up in “TRIPS-plus” agreements. Much of the literature about “TRIPS-plus” agreements have focused on how these agreements have treated the TRIPS standards as a baseline from which to increase levels of enforcement or protection.³⁹ But along with the “upward ratchet,” there have been some recent developments to incorporate other societal concerns such as health, human rights, and corporate social responsibility. These agreements are relevant to interpreting international intellectual property obligations as they represent subsequent practice.

The United States was one of the original negotiating parties in the Trans-Pacific Partnership Agreement but chose to discontinue its part in the negotiations.⁴⁰ Regardless, the negotiations moved forward with eleven countries and concluded as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).⁴¹ The first six countries to ratify the agreement, which entered into force in 2018, were Australia, Canada, Japan, Mexico, New Zealand, and Singapore.⁴² It was subsequently ratified by Brunei, Chile, Malaysia, Peru, and Vietnam.⁴³ Another agreement that represents progress in some areas is the Regional Comprehensive Economic Partnership, which entered into force on January 1, 2022, and has fourteen Asian countries among its members.⁴⁴

³⁹ See Sarah R. Wasserman Rajec, *The Harmonization Myth in International Intellectual Property Law*, 62 ARIZ. L. REV. 735, 739–40 (2020) (This Article joins the voices that have noted the ways that the TRIPS Agreement has served as a “floor” for IP rights while allowing for future increases; it does so by examining the course of one of the centerpieces of IP rights harmonization: duration. Of all the reforms to IP rights pursued in the name of harmonization, term is arguably the most important. The minimum standards set for copyright and patent terms were among the strongest harmonizing provisions of the TRIPS Agreement, particularly when coupled with subject matter requirements. This is because the term of protection is, essentially, an on-off switch with respect to IP rights. If terms differ between countries, then there will be some period of time in which there is protection in one country and not the other. This is precisely the type of non-tariff barrier that TRIPS was meant to address.).

⁴⁰ Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement, 82 Fed. Reg. 8497 (Jan. 5, 2016), <https://www.federalregister.gov/documents/2017/01/25/2017-01845/withdrawal-of-the-united-states-from-the-trans-pacific-partnership-negotiations-and-agreement> [https://perma.cc/46MS-EHK2].

⁴¹ See *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*, AUSTRALIAN GOVERNMENT, DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE, <https://www.dfat.gov.au/trade/agreements/in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership> [https://perma.cc/Z7AT-SX7W]. It should be noted that the CPTPP incorporates the provisions of the original Trans-Pacific Partnership (TPP). *Id.* The full text of the CPTPP is available at *Text of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*, AUSTRALIAN GOVERNMENT, DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE, <https://www.dfat.gov.au/sites/default/files/tpp-11-treaty-text.pdf> [https://perma.cc/B9XA-BL73] [hereinafter CPTPP].

⁴² The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is a free trade agreement (FTA) that entered into force for Australia, Canada, Japan, Mexico, New Zealand, and Singapore in late 2018; Vietnam in 2019; Peru in 2021; and Malaysia in 2022. *Id.*

⁴³ *Id.*

⁴⁴ See *Regional Comprehensive Economic Partnership Agreement*, RCEP, <https://rcepsec.org/legal-text/> [https://perma.cc/Q8PG-73VE] [hereinafter RCEP]. See also About, RCEP, <https://rcepsec.org/>

The CPTPP retained various provisions from the TPP, including reductions in tariffs and barriers, but also suspended many patent and copyright provisions that the US, in particular, had advocated for in the TPP negotiations.⁴⁵ Specifically, the CPTPP has suspended and delayed various requirements regarding patents and pharmaceuticals and copyright.⁴⁶ By comparison the RCEP lowers many trade barriers but excludes many of the CPTPP's labor and environmental provisions.⁴⁷

The CPTPP may be described as an agreement that is more concerned with corporate social responsibility than the RCEP, but the RCEP has some innovations that developing countries would likely embrace. Both the CPTPP and the RCEP emphasize public health and incorporate the Doha Declaration on the TRIPS Agreement and Public health.⁴⁸ They also incorporate the language of articles 7 and 8 and the TRIPS Agreement, which are referred to as the TRIPS flexibilities. For example, RCEP art. 11.1(2) mirrors this language or Article 7 of TRIPS, stating:

rcepsec.org/about/ [https://perma.cc/7XK6-GW9S] ("In August 2012, the 16 Economic Ministers endorsed the Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership. The RCEP negotiations were launched by Leaders from 10 ASEAN Member States (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam) and six ASEAN FTA partners (Australia, People's Republic of China, India, Japan, Republic of Korea, and New Zealand) during the 21st ASEAN summit and Related Summits in Phnom Penh, Cambodia in November 2012.").

⁴⁵ *Key Differences Between CPTPP and TPP*, VIETNAM INV. REV. (Mar. 7, 2018), <https://vir.com.vn/key-differences-between-cptpp-and-tp-56904.html> [https://perma.cc/KQ4B-BSBF] (stating "around 20 articles of the CPTPP have been temporarily postponed, including the strong commitments on intellectual property that the US raised before"); Joanna Shelton, *The CPTPP and Intellectual Property Rights Protection*, CSIS (June 28, 2021), <https://www.csis.org/analysis/cptpp-and-intellectual-property-rights-protection> [https://perma.cc/5EL9-RLDA] ("The CPTPP's suspended pharmaceutical patent provisions include term of protection for biologics (e.g., certain vaccines and other products from living organisms; the United States pushed for twelve-year protection in the TPP but settled for eight); protection for new uses, methods, or processes of making a product; patentability of inventions derived from plants; lengthened terms of protection in cases of unreasonable delays in granting patent or marketing approval; and protection of undisclosed test or other data Suspended copyright provisions address lengthened terms of protection; responsibilities of internet service providers to prevent online infringement; protection of encrypted satellite and cable signals; evasion of controls on sharing digital copies; and related measures. All with civil and criminal penalties spelled out for violations.").

⁴⁶ *Key Differences Between CPTPP and TPP*, *supra* note 45 (stating "around 20 articles of the CPTPP have been temporarily postponed, including the strong commitments on intellectual property that the US raised before. . . . The CPTPP will delay requirements for member countries to change their laws and practices. The CPTPP also suspends the time term of a copyright in case of unreasonable delays in licensing. Members of the agreement will not have to extend protection terms from 50 to 70 years.").

⁴⁷ CONGRESSIONAL RESEARCH SERVICE, CPTPP: OVERVIEW AND ISSUES FOR CONGRESS (2022) ("RCEP includes China, Australia, Japan, New Zealand, South Korea, and the ten ASEAN members and took effect in 2022 for most members. Like CPTPP, RCEP lowers trade barriers and sets rules among the participants, but has generally less extensive commitments (e.g., lower levels of tariff liberalization, and broad exceptions from DS, including the digital trade chapter) and omits issues covered in CPTPP such as labor, environment, and SOEs."), available at <https://crsreports.congress.gov/product/pdf/IF/IF12078> [https://perma.cc/6RW5-ZUN6].

⁴⁸ RCEP, *supra* note 44, art. 11.8.

[t]he protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.⁴⁹

This is a way of ensuring that the attempt at intellectual property balance that was part of the TRIPS Agreement continues in these TRIPS plus Agreements. But RCEP and CPTPP bring in additional dimensions. For example, the CPTPP also incorporates corporate social responsibility and integrates social progress in its preamble, specifically mentioning corporate social responsibility, sustainable development, traditional knowledge, and the public interest. In the CPTTP preamble, the parties state that they:

REAFFIRM the importance of promoting corporate social responsibility, cultural identity and diversity, environmental protection and conservation, gender equality, indigenous rights, labour rights, inclusive trade, sustainable development and traditional knowledge, as well as the importance of preserving their right to regulate in the public interest . . .⁵⁰

Both the CPTPP and RCEP agreements also build on the TRIPS Agreement by recognizing traditional knowledge. Article 18:16 of the CPTPP addresses traditional knowledge, recognizing, “the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other,” and the parties endeavor to cooperate to enhance the understanding of traditional knowledge and genetic resources.⁵¹ CPTPP provides for traditional knowledge to be taken into

⁴⁹ RCEP, *supra* note 44, art. 11.1(2).

⁵⁰ CPTPP, *supra* note 41, pmbl (emphasis added).

⁵¹ CPTPP, Section 18.16, Cooperation in the Area of Traditional Knowledge, states:

1. The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.
2. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.
3. The Parties shall endeavour to pursue quality patent examination, which may include:
 - (a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;
 - (b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;
 - (c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and

account in patent applications.⁵² RCEP goes further than the CPTPP as it relates to traditional knowledge, providing that parties may establish appropriate measures to protect traditional knowledge, genetic resources, and folklore.⁵³ RCEP and CPTPP both provide for patent applications to take traditional knowledge into account.⁵⁴ These recent agreements build on the TRIPS Agreement in ways that represent the interests of developing countries. Importantly, they incorporate the balance between protection and access, as well as the public interest and access to health.

CONCLUSION: IP AS PART OF THE SOCIAL FABRIC OVER THE NEXT 100
YEARS

International intellectual property will increasingly move from an isolated field focused on the technical analysis of meeting specific criteria, to one that engages with basic human needs. As discussed in this short essay, we have already seen this shift in international intellectual property law, and it likely to persist. Intellectual property law will continue to integrate social issues, whether through the lens of human rights, human development and flourishing, or corporate social responsibility. As difficult as it is to predict the future, I anticipate that the next one hundred years of international intellectual property will increasingly center human development and human flourishing, alongside innovation and knowledge dissemination, as core goals of the international intellectual property regime.

(d) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.

CPTPP, *supra* note 41, art. 18.16

⁵² *Id.*

⁵³ RCEP, *supra* note 44, art. 11.53(2).

⁵⁴ RCEP, Article 11.53, Genetic Resources, Traditional Knowledge, and Folklore, states: “The Parties shall endeavour to pursue quality patent examination, which may include: (a) that when determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account.” RCEP, *supra* note 44, art. 11.53(3).