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**Institutional Innovation or Institutional Imitation? The
Impacts of the Agreement on Trade-Related Aspects of
Intellectual Property Rights (TRIPS) on India’s Patent Law
and Practice
(Professor Bhaven Sampat)**

Organized by
the World Intellectual Property Organization (WIPO)

Geneva, December 13, 2010

13.30 – 13.40 Introduction

Moderator: Mr. Carsten Fink, Chief Economist, World Intellectual Property Organization (WIPO), Geneva

13.40 – 15.00 Institutional Innovation or Institutional Imitation? The Impacts of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) on India's Patent Law and Practice

Speaker: Mr. Bhaven N. Sampat, Assistant Professor, School of International and Public Affairs, Columbia University, United States of America

Abstract: This paper provides empirical data on the impacts of TRIPS in Indian pharmaceuticals. This is an interesting context both because of the unique role of the Indian generics industry in the provision of drugs to the developing world, and because India was active in exploiting TRIPS flexibilities. Most prominently, Indian patent laws limit patents on "incremental" innovations, which dominate drug patenting in the developed world. This *institutional innovation* has been greeted with enthusiasm by some, but concern from others. This contrasts sharply with the *institutional imitation* argument: claims that these restrictions on patentability of incremental innovations are not being implemented in practice, reflecting resource constraints facing Indian examiners, and pressures to mimic EPO and USPTO decisions. Proponents of both views agree that, if nothing else, the welfare impacts of TRIPS in India will be determined by the extent to which India sticks to, or departs from, international patentability standards.

In this paper novel data on Indian drug applications is used to assess the institutional innovation versus institutional imitation hypotheses. The authors finds some correlation of prosecution outcomes across countries, but also that India is different –with a much lower grant rate than the EPO. However, the main source of these differences cited in existing policy discussion –Section 3(d) of India's Patent Act– has had very little effect on outcomes in India vis-à-vis the control sample. The data also show that "incremental" innovations have lower grant rates even in jurisdictions without formal subject matter restrictions on incremental innovations, suggesting that subject matter restrictions and inventive step standards can have similar effects on patent prosecution outcomes.

There has been considerable enthusiasm that flexibilities in new international patent laws could be exploited to cater national patent laws to individual countries' socio-economic priorities. The analyses in this paper suggest this is overly optimistic. Ensuring that patent prosecution outcomes in practice reflect patent laws on the books may require more resources for (and changes in incentives facing) developing country patent examiners, whose decisions will ultimately determine the impact of TRIPS.

Full paper at: www.columbia.edu/~bns3/nber_sampat.pdf

Time will be reserved for an open discussion.

The session will start at 13.30 p.m., on Monday, December 13, 2010, at the headquarters of WIPO, 34, chemin des Colombettes, Geneva (Conference Room B).

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