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CATALYST OR CONSTRAINT? INTELLECTUAL PROPERTY IN GLOBAL TRADE

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Intellectual property rights (IPR), plays a crucial role in the contemporary international trade, and is responsible for molding the flow of ideas and technology. However, it should be discarded that, it also occupies a paradoxical state in the global trade arena, on one hand it promotes innovation, and foreign investment, yet, on the other hand this particular mechanism often times restricts market entry, accelerates trade disputes and also enables inequalities in the international trade. In the contemporary times, where intangible property specifically defines feature of the world economy, Intellectual property has become highly consequential. The present article examines IPR both as enabler and barrier when it comes to cross-border trade. Furthermore, this paper also examines the catalytic role IP plays in pharmaceuticals, technology transfer and digital markets along with that it also elucidates and addresses the impact of rigid IP protection, which become visible during the COVID-19 pandemic. Ultimately, this article concludes by addressing the upcoming challenges such as, Artificial intelligence and trade driven through data. And how a sector-specific and equity-driven IP framework can balance innovation incentives with accessibility that will eventually advance the IP framework.

Keywords: *Intellectual Property Rights, Cross-Border Trade, Innovation, Global Governance, balanced approach*

INTRODUCTION

In the 21st century, international trade has been reframed through the growth of intangible property. From software codes and pharmaceutical formulas to digital platforms and creative content, intellectual property (IP) now constitutes a significant share of global value flows. The legal rules that govern these particular assets known collectively as Intellectual Property Rights (IPR), have become a central to trade negotiations, investigation strategies and even public health

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policies. Intellectual property whether in the form of Patents, trademark, or copyrights, has become the currency of the modern economy. According to the World Intellectual Property Organization, more than 40% of the global trade value is now generated by industries that depend heavily on Intellectual property.²

Even the multinational corporations rely on these rights not simply to shield their innovation from being replicated in the markets, leverage licensing and building partnership beyond national borders.

Yet the rise of IPR has produced a striking paradox. IPR on the one hand, claims and support innovation, creativity and promotes technological progress. however, it can create rigid barriers by restricting access to necessary goods and limiting the participation in the international markets. Additionally, the pharmaceutical patents increase this question even more, as they provide companies who have the capacity to invest in highly expensive drugs development, but they also restrict the arrival of affordable drugs leaving behind the ones who can be saved from but due to inaccessibility they are left dying. Furthermore, Copyright law has enabled streaming platforms and online services to expand across borders, yet practices such as the geo-blocking undermine the very idea of a borderless digital sphere³. And these dilemmas have become more prominent especially after the recent pandemic hit and with the rapid growth of artificial intelligence. The debates over the vaccine patents, and various questions regarding the digital sovereignty, shows how rapidly IPR has paved its way and not just in these spheres, rather in access to knowledge and technology as well.

IPR AS A CATALYST FOR GLOBAL TRADE

When we think of IPR, we think of it as a technical, something that has been there in laws and treaties. However, in reality, it reflects how investments will be made, how to earn consumer trust

² Davide Bonaglia and Sacha Wunsch-Vincent (WIPO), 'Cross-border Payments for the Use of Intellectual Property (IP) surpass 1 trillion US Dollars in 2022, a record high' (June 28, 2024)
> accessed 18 September 2025

³ S Flynn, 'Non-Patent Intellectual Property Barriers to COVID-19 Vaccine, Access (2021) American University Wahington College of Law Research paper
<<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1073&context=research>> accessed 18 September 2025.

when they buy any product or service. Three aspects of this role stand out the most clearly that its contribution to innovation, its influence on foreign investment and technology transfer, and its role in brand creation and consumer markets.

INNOVATION AND THE KNOWLEDGE ECONOMY

The mere fact that innovation never happens in vacuum. Scientists, artists, and the entrepreneurs invest time and resources because of the believe that they have that their efforts will be rewarded. Intellectual Property gives the assurance. Patents, copyrights, and related essentially provides a breathing space in which innovators can recover costs and build markets before imitators enter.

Taking Pharmaceuticals as an example. Developing a new drug may take over a decade and a billion of dollars, with a high risk of failure. Without the security of a patent, the moment a successful drug reached the shelves, it could be copied by others at minimal cast. Few companies would take such risk in the first place. A similar story can be told in software, music and films, where creative output can be infinitely replicated once produced. In these cases, IP protection underpins the global spread of ideas and products.⁴

Economists often describe this as “knowledge economy” and the countries with stronger IP frameworks generally see more investment in research and development.⁵ While IP is not the only factor that encourages innovation, it is a crucial part of the ecosystem that allows new knowledge to be converted into marketable, tradable goods and services.

FOREIGN INVESTMENT AND TECHNOLOGY TRANSFER

Another way IPR catalyzes trade is by reducing the risks of doing business across border. Companies are understandably reluctant to bring their cutting-edge technology into market where it could easily be copied.

⁴ Arnold Vahrenwald & Giovanni A. Pedde, ‘The Pharmaceutical Innovation Ecosystem and Patent Protection Chapter 1 (Special Issue, Unicamillus, March 2025) <<https://doi.org/10.36158/97912566906332>> accessed on 17 September 2025

⁵ A. Lakani , ‘Intellectual Property and Economic Development: Catalysts for Innovation and Growth’ (2024) 1 *International Journal of Advanced Research in Humanities and Law* 83 <<https://doi.org/10.63053/ijrel.15>> accessed on 18 September 2025

This is why multinational corporations are more willing to enter joint ventures or license technology in countries where patent and trademark laws are effectively enforced. For developing nations, this can help in unlocking new skills and technologies. China and India were once criticized for weak IP protection but they have gradually uplifted IP protection. Now this major shift has led to a significant increase in the foreign trade and has led to better foreign investment and cross-border trade partnership.

If we see IPR with a critical lens, it might seem like that IP sometimes helps multinational more than it helps the local firms. However, if we perceive it through a broader spectrum, IP rules if carefully balanced, it can draw capital and knowledge into places that might otherwise be excluded from the international value chains.

BRANDING AND CONSUMER MARKETS

As the 20th century draws to a close, Patents, Trademark have spread their wings beyond measures, and they hold the most immediate effect on everyday commerce. When it comes to a brand name or a logo it does not only act as label rather, it represents a promise of quality. And this is the reason that a consumer of the same bottle of Coca-Cola in Delhi and the consumer of the same product in London, trust that it will have the same taste. All this reflects that a brand carries the utmost weightage and oftentimes, the value of a company is tied, not to its factory or products but to the reputation a brand holds in the global market. Along with this, trademark law has become one of the biggest reasons why licensing and franchising agreement have adversely grown in the international trade market. However, it has a down side to it as well, since, licensing and franchising agreement, also leads to counterfeiting. The fact that, fake products does not only tarnish company's reputation, it also tends to hamper public trust which they have on a specific brand. The WIPO, estimates that more than 3% goods account for pirated and counterfeit products. Therefore, the current need is to, have an effective trademark framework that would help in protecting both the business and consumer, and foster confidence in the cross-border trade. Since, IPR has moved from being a niche legal concern to now a major aspect in the global trade market. It's not just about owning ideas rather, it helps the inventor feel more secure when they take risk, fosters confidence, and help the buyers trust as to what they are buying.

Today's trade is not just about delivering tangible goods like steel or oil. It is also about transferring ideas, creativity and reputation across borders. However, this kind of shift raises several questions as well, for instance, if the assets are intangible and they hold similar weightage of physical commodities, then how should the trade rule adapt? And ultimately who is going to get benefit from it when the IPR protection extends borders? Now these are some tricky issues that make Intellectual Property both powerful and controversial. And they are exactly what we need to explore next.

IPR AS A CONSTRAINT ON TRADE

IPR is considered as an enabler of innovation and creativity which is true. However, there is another side of it, that rigid creativity protection protocols may, lead to inflation in the goods price, limit access to essential goods, and also lead to monopolization. And this paradox has become more prominent in different sectors such as the pharmaceuticals, technology disputes and the rise of Artificial Intelligence.

ACCESS TO MEDICINES AND PATENT

The fact that a patent grants exclusive rights to the innovation which often times allows the patentee to enjoy monopoly over essential commodities, and especially in the pharmaceutical sectors. In our country, where continuous efforts are being made to make the medicines available to all at a reasonable-costs, however, there are instances where pharmaceutical industries take advantage of the patent monopoly by hiking the prices and at the same time, they also often put essential medicines out of the reach. At the time of HIV/AIDS crisis, several vital lifesaving medicines were, kept out of the reach of general public. The global outcry eventually led to the Doha Declaration on TRIPS and Public health in 2001, which reaffirmed the right of states to issue compulsory licenses for essential drugs.⁶

When the COVID-19 pandemic arrived, the same fault lines reappeared. The push for a patent waiver for vaccine technologies divided nations. Out of which some nation insisted IP protection

⁶ WTO General Council, Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WTO, 2003), para 6 <https://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm> accessed 17 September 2025

is essential to sustain research, others argued that human lives demand broader access. Now these instances reflect how patent, can act as a barrier at times in cases of crisis.

Now, talking of copyright, it has led to the expansion of the music streaming, films and other creative work all over the world. However, because of territorial licensing and other factors like, geo-blocking they sometimes act as blockages. For instance, a film that streams free of cost in a particular country might not be fully accessible in another country, now the non-streaming of that film is not because of technology challenges, or because it is banned, but rather, due to the fact that, licensing rights have been reserved in that territorial line. Now, this particular divide, affects the small creators even more as they lack the position to bargain in order to secure broad licenses. And due to this, their work apparently does not get global recognition and even within regions that hold pride in themselves on integration, like the EU, which has illustrated how copyright rules can temper trade rather than to unify it.⁷

TECHNOLOGY LOCK-IN AND TRADE DISPUTES

Another level of constraint can be seen in the technology market, where IPR has become a crucial tool for geopolitical rivalry. As per the International Organization for Standardization (ISO), technical standards amount approximately 80% of global trade.⁸ The tech war between the USA and China, is the biggest example of this constraint. Where, Washington accusing Beijing of having weak IP protection framework and on the other hand China looking down upon western firms for patent dominance. As per the to the International Organization for Standardization (ISO), technical standards

The tech war between the USA and China has made semiconductors a global flashpoint. With strict export controls on advanced chip tools and software, and in that, China's efforts have even caused roadblocks the condition and despite, the heavy investment, firms like Huawei still struggle

⁷ European Commission, Geo-blocking in Cross-border e-commerce in the EU Single Market (Joint Research Centre, 23 May 2016) <https://joint-research-centre.ec.europa.eu/reports-and-technical-documentation/geo-blocking-cross-border-e-commerce-eu-digital-single-market_en> accessed 18 September 2025.

⁸ John Zadeh, 'US-China Relations: From Trade War to Tech War in 2025' (June 6, 2025) <<https://discoveryalert.com.au/news/shift-trade-tech-war-us-china-2025/>> accessed 18 September 2025

without access to the key technologies. hence, it suggests that how technology enables global power.⁹

Additionally, as new technologies became persistent, most of the developing nations have faced an unequal burden. Many of these nations even after being the net importers of the IP protected goods, are being bound by the uniform standards of TRIPS. Especially, in country like Africa have been arguing that strict patents framework can undermine the growth of domestic pharmaceutical sectors.

The challenge, therefore, before us is not, whether to protect intellectual property but rather how to calibrate it. And too much of protection whether through increased patent terms, restrictive licensing, that delays the entry of generics, and narrows policy space for developing countries. Intellectual property today is not just a technical framework rather it is a policy decision. And when that choice goes too far towards exclusivity, it stops serving its purpose and instead threatens the very spirit of trade and cooperation it was meant to uphold.

CONTEMPORARY FAULT LINES

The global discourse on IP has transitioned from being just an abstract battle in trade law, to the site of political contestation with real impacts for millions of people. the pandemic, the emergence of AI and the battle for digital sovereignty has highlighted that IP, as it is in present time perceived, is no longer sufficient. During COVID-19, questions over patents suddenly made headlines. The campaign to implement a temporary waiver on vaccine intellectual property highlights how divided the world still is, over the need to balance innovation with the equally urgent need to ensure access to life saving medicines. The issue also has reinforced a re-occurring issue, that is that the IP system was created in a world where delays in the access to knowledge were not catastrophic. In public health crisis, the delay in access could cost lives.

Meanwhile, the swift of AI introduced another kind of complexity. Algorithms can now create new products, write creative works, and even build innovations that, at least in principle, could be patentable. The law is still trying to match its pace. There are several layers of questions. One is

⁹ Ruth L Okedji, *International Intellectual Property Law and Policy* (Carolina Academic Press 2018) 287

whether a machine can truly be considered an inventor. And if not, who owns its inventions. Without the resolution of such questions, market risk fragmentation, cross border collaboration could decline, and those who owned the largest datasets will exert greater cumulative power. Furthermore, in the digital space, it serves as a tool of geopolitics. The contestation around issues, related to data sovereignty, has the potential to usher in a new age of protection, one that destroys the vision of digital commons that once promised the world in which trade was truly borderless.

RECONCILING INNOVATION WITH ACCESSIBILITY

The goal today is not to abandon the concept of Intellectual Property, but to rethink the way in which it apparently works. The mere fact that the future of the trade depends upon finding a right balance, something that would support research and creativity, and not something that would ultimately become a barrier when it comes to access and equity.

Currently, global IP framework, such as the TRIPS, adopt a view which largely considers a uniform approach to intellectual property. Unfortunately, the needs of the different sectors are far from uniformity. A patent in pharmaceutical can mean the difference between life and death, while in fashion industry it often rewards design flair and brand value.¹⁰ In the software and data industries another set of rules applies. Agriculture and clean technology will apply another. Treating these different sectors as if they were the same, defies a more particularized, sector-specific approach to protect the needed, but to also relax the restrictions where public access may matter just as much, if not more than private access.

Rigid IP framework in the global market, often pose more challenges than it creates opportunities especially for the developing countries. And in order to support inclusive economic growth, flexibility is a non-negotiable aspect in IP frameworks. Though tools like compulsory licensing, shortened patent terms, and parallel imports are there, yet these mechanisms are only exposed in essential medicines and empower local industries, but they need to be embedded in trade agreements to bridge the gap between innovators and late adopters.

¹⁰ Rod Falvey et al., 'Intellectual Property Rights and Economic Growth' (2006) <<https://onlinelibrary.wiley.com/doi/10.1111/j.1467-9361.2006.00343.x>> accessed 18 September 2025

CONCLUSION: REIMAGINING THE ROLE OF IPR IN A BORDERLESS WORLD

Intellectual Property, in the context of global outreach, has never quite been a stable concept. When civil society, law or public discourse reference IPR, it usually is with respect to something that builds creativity, builds public faith and trust, and rewards citizens or others for creativity and innovation. However, we are now living in an age where global marketplaces have taken on new and significant importance to aspects of IPR.

Not only is IPR shaping investment decisions and who can access medicines and technology, but it also shapes how countries relate to each other in a globalized world, and we saw these tensions rise during the COVID-19 Pandemic. The disagreement on waiving COVID-19 vaccine patents centered on clear divide in society and arguably demonstrated, on one hand that wealthier countries defended strong IP protections as a mechanism to incentivize innovation, while many of the developing countries argue that these protections interfered with the life of a large part of the population, because IP protection can throttle life-saving technologies. A similar pattern emerged with semiconductor disputes, claims of unfair digital platforms practices and data localization laws and affirmed that IPR had become a mechanism of economic incentivization and less of a legal protection, hence the primary feature of IPR is to be economically encouraging innovations and creativity in the global sphere.

Ultimately, IPR's role in the international trade are neither pure catalysts nor mere constraint rather they are policy instrument whose effects mostly depends on how they are calibrated. Moreover, it will vary on different sectors and depends upon whether the policymaker view it solely as a fixed set of laws, or as a dynamic system that is apparently prone to market reality and has the tendency to adapt and, if all these factors are taken into consideration, intellectual property will not act as a barrier. Instead, it can become a bridge linking innovation with the wider goals of society.