

GLOBAL PATENT REGIME - LEGAL FICTION OR FUTURE REALITY¹

Patent as it has been considered by Positivist school of thought, is a grant by the State to offer limited exclusive monopoly to the inventor². This essentially requires the inventor to go around different countries of the world to get Patent from each State. It is true that Patent Cooperation Treaty has offered much needed help regarding the priority date³. Even then it is conceptually far away from Global Patent. European Patent Convention has made some movement in this regard. European Patent Office examines Patent application for its member countries and grants Patent which is eventually recognized by the member countries⁴. Let us take clue from Europe and use it in South Asia. Hypothetically South Asian Patent Office can examine Patent application for its member countries and grants Patent which can be eventually accepted by the member countries. European Patent Office is a reality today, South Asian Patent Office may be a possibility for tomorrow and ultimately Global Patent Office may become a probable structure in near future. Along with other incidental features, these attempts to make a Global Patent Office will nonetheless dilute the administrative relevancy of national Patent Offices of all the countries in the world. The administrative structure of Global Patent Office will be integral component of global governance.

Global governance is essentially based on regular administrative principles. One of the cardinal features of international law is to create norm at the international level, leaving individual States free to accept it or not. But today in our global village, domestic and international issues are so interconnected that more and more State freedoms have started breaking down⁵. At this juncture, it is essential that set of recognized and widely accepted administrative norms are distilled out to create a genre of Global Administrative Law⁶.

“While non - legal scholars are often very aware of the legal debates, many legal scholars and writers often seem less aware of the legal debates emerging around intellectual property generally, rather than its specific forms. These political debates are centered on the proposition that until we have a globe that is more equal we cannot justify a global regime that attempts to treat all countries and regions similarly when knowledge is made property”⁷.

¹ Anirban Mazumder, Lecturer in Law, National University of Juridical Sciences, Calcutta, India.

² Dr. Peter Drahos, Intellectual Property and Human Rights, IPQ 3 (1999) 349

³ Art 8.

⁴ Art 2

⁵ Nico Krisch, Benedict Kingsbury, Introduction : Global Governance and Global Administrative Law in the International Legal Order, EJIL 17 (2006) 1

⁶ Benedict Kingsbury, Nico Krisch, Richard B. Stewart, The Emergence of Global Administrative Law, New York University Public Law and Legal Theory Working Papers, Paper 17, 2005.

⁷ Christopher May, Why IPRs Are A Political Issue, EIPR 1 (2003) 1.

Keeping pace with globalization, time has come to move away from century old Paris Convention to an International Patent System. Instead of locally receiving, locally examining and locally granting, we can think of a system based on globally receiving, globally examining and globally granting Patent. The Patent can be granted on the basis of first to post on an international level. Local Patent databases need to be connected to a globally distributed database to make international search possible. Global standard in examination is to be maintained to make search uniform through out the world. As a result a Least Developed Country will enjoy the same standard of Patent Examination like a Developed Country, without having its own infrastructure. European patent have following advantages – economy and efficiency : a cost effective and time saving way to obtain protection in a range of European countries, - a strong patent : every European patent has undergone substantive examination and can be obtained for countries which otherwise have ‘registration only’ systems, - unitary effects in the EPC contracting states : term – normally up to 20 years from the date of filing, scope of protection, binding text, ground for revocation⁸.

Globalization has brought global governance and global governance has in turn brought changes to the structure of classical international law which is founded on consent based international legal instrument. Security Council administration, global banking regulation, international administration of refugees and trans-boundary environmental issues have created ‘global administrative space’ which has raised question mark regarding the legitimacy and accountability of personnel involved in the global governance.

Global Administrative Law will take further shape in defining certain terms regularly used in patent regime in the international perspective. Few of these terms are inventive step, mental step, technical feature, abstract ideas and scientific theories. The court decisions also should adhere to a harmonized idea of patent regime. Even there has to be some consensus regarding protection of design patent, utility model, and petty patent. Again taking clue from European experiences, a direction to harmonize substantive law on patent has made the venture of European Patent Office successful. To conclude with an optimistic note, a conceptual design emerging from this paper may eventually help us to reach to a meaningful global administrative structure on patent.

⁸ European Patent Office Manual.