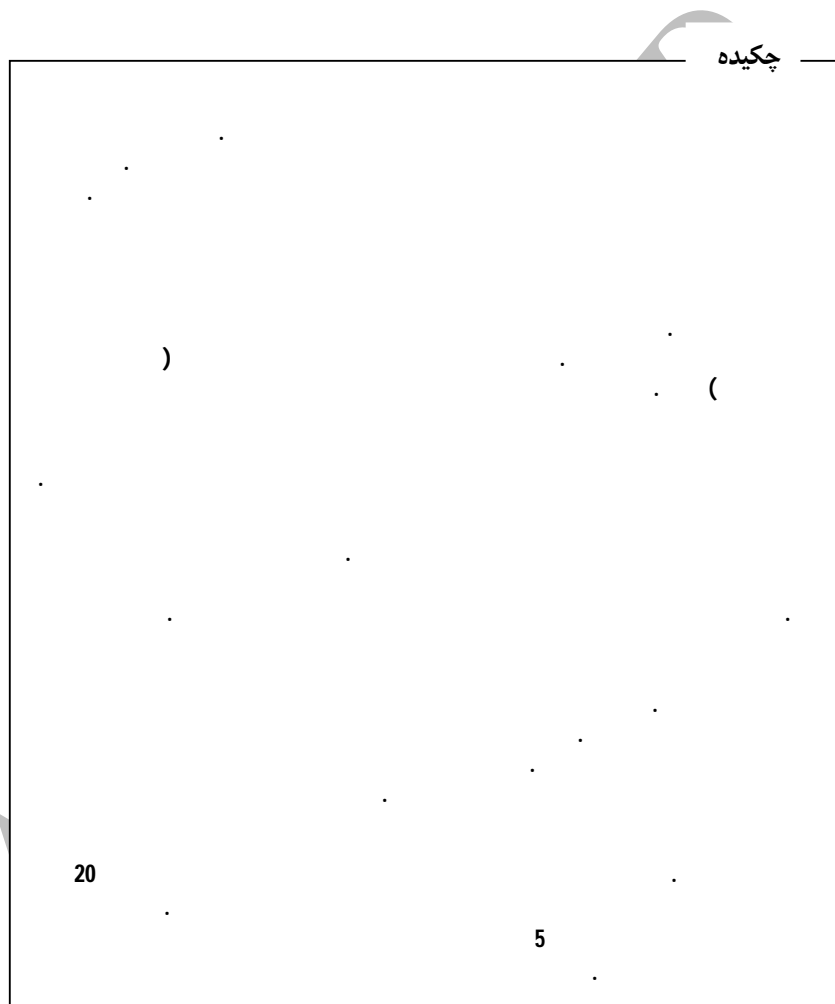


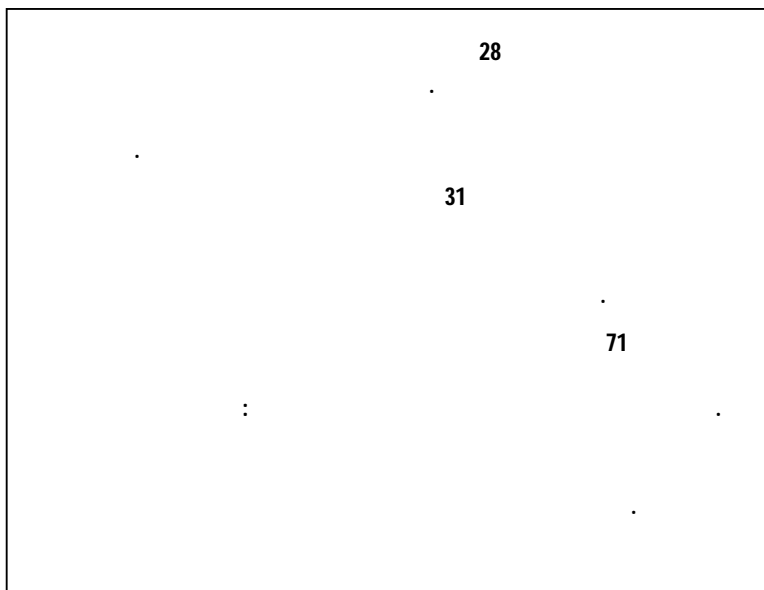
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Wikipedia, the free encyclopedia, Agreement on Trade-Related Aspects of Intellectual Property Rights, p. 2.

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F. Machlup and E. Penrose, "The Patent Controversy in the Nineteenth Century",
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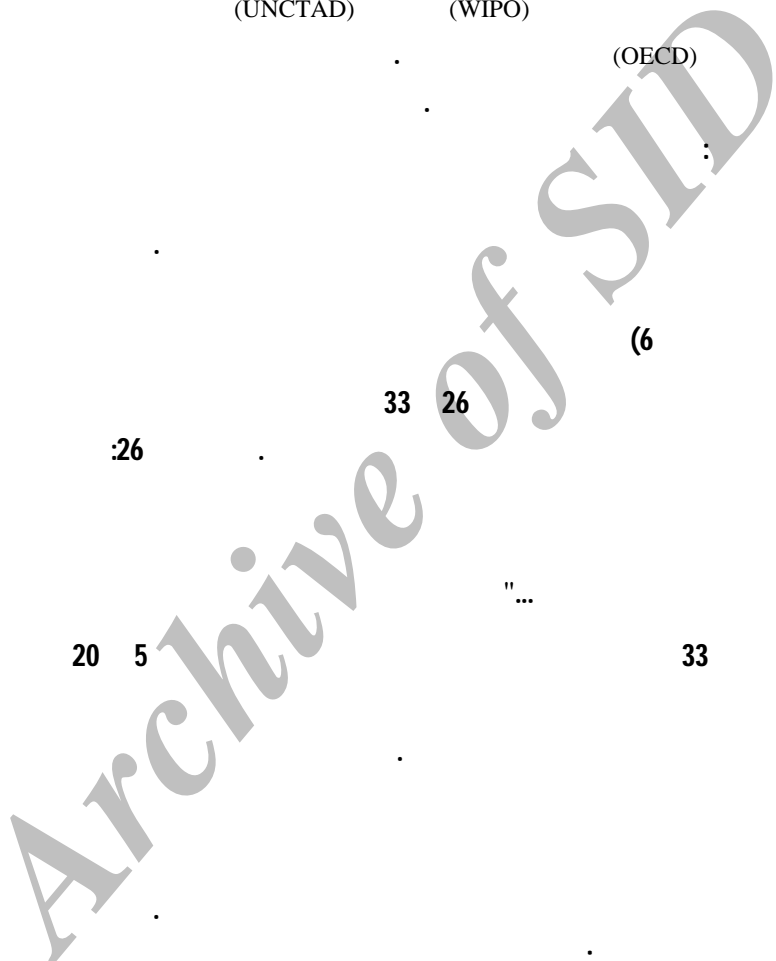
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(E.T. Penrose (1951) p. 50).

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.1 :

Michael Blakeney, *Legal Aspects of the Transfer of Technology to Developing Countries*, Oxford, ESC Publishing Limited, 1989, pp. 49-57.

(J.E.S. Parker, pp. 49-57; H. Ulrich, :

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(F. K. Beir & J. Strau .

(1977) p. 396.)

.(UNCTAD (1975) p. 7) .

(C. T. Taylor & Z. A. Silberston, .

p. 55)

(J. S. Parker, pp. 312-313) .

(S. Lall (1976), p. 9.).

(Taylor & .

Silberston, 194-201; E. Mansfield **et al**, 907-914; E. Mansfield (1986), 173-181.)

حق اختراع به عنوان مشوق سرمایه گذاری مستقیم خارجی و انتقال تکنولوژی

(F. K. Beier (1980), 563-

584; C. Vaitos (1973), 77)

. (Twinomukunzi (1982), 40; E. Penrose (1973), 772-773.)

(A. S. Kirim (1985), 219-236).

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(Ibid, 227-228).

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¹(UNCTAD/ICTSD (2001), 43-44) .

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(O. T. Adikibi, p. 85.) .

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J. W. Baxter, T. P. Sinnot, *World Patent Law and Practice*, Matthew Bender New York, 1986 (vol. 2). UNCTAD (1977), *op cit*, para. 33.

: (WIPO)

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WIPO, *Model Law for Developing Countries on Inventions (vol.1)*, 1979, WIPO Pub. No. 840, E.; WIPO, *The Basic Proposals for the Treaty and The Regulations submitted under Rule 29(1) of the Draft Rules of Procedures, by the Director*

(UNCTAD (1977), paras, 15, 99-114.) .

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(Hanz Peter Knuz- Hallstein, 649).

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(General Agreement on

General of WIPO (PLT/DC/3) for the Diplomatic Conference for the Revision of the Paris Convention (to be held at Hague, June 3 to 28, 1991).

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(Feb. 1991) *Industrial Property*, pp. 118-134.

1. The Patent Cooperation Treaty, PCT.

Tariffs and Trade – GATT)

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(South Centre (1997), -9).

(UNCTAD/ICTSD (2001), 19) .

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(M. Blakeney (1996), 118) .

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Faysal Ameri, *The International Legal Regime for the Transfer of Technology to Developing Countries with special reference to Deep Seabed Mining*, Unpublished Ph.D. Thesis, the Faculty of Law, Manchester University, 1994, pp. 215-268; Carlos M. Correa, *The Strengthening of IPRs in Developing Countries and Complementary Legislation*, University of Buenos Aires, October 2000: (a report prepared upon request of DFID, UK).

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UNCTAD, *The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Practices*, UN Pub., New York, 1981, TD/RBP/CONF./101 Rev. 1. pp. 2-15; C. M. Correa (2000), *The Strengthening...*, *idem*.

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- انگلیسی

- O. T. Adikibi, "The Transfer of Technology to Nigeria. The Case of Tyre Production", in C. H. Kirkpatrick and F. I. Nixon (Eds.), *The Industrialization of Less Developed Countries*, Manchester University Press, 1983.
- Huala Adolf, "Trade-Related Aspects of Intellectual Property Rights and Developing Countries", *The Developing Economies*, XXXIX-1 (Macrch 2001).
- Friedrich-Karl Beir and Joseph Straus, "The Patent System and its Implicational Function: Yesterday and Today", (1977)8 *The International Review of Industrial Property and Copyright Law (IIC)*.
- J. W. Baxter, T. P. Sinnot, *World Patent Law and Practice*, Mattew Bender New York, 1986 (vol. 2).
- F. K. Beir, "Future Problems of Patent Law", (1972) 3, 4 *IIC*.
- F. K. Beir, "The Significance of the Patent System for Technical, Economic and Social Progress", (1980) 11, 5 *IIC*.
- Michael Blakeney, *Legal Aspects of the Transfer of Technology to Developing Countries*, Oxford, ESC Publishing Limited, 1989.
- Michael Blakeney, *Trade Related Aspects of Intellectual Property Rights: a Concise Guide to the TRIPS Agreement*, London, Sweet & Maxwell, 1996.

Carlos M. Correa, *The Strengthening of IPRs in Developing Countries and Complementary Legislation*, University of Buenos Aires, October 2000: (a report prepared upon request of DFID, UK).

- C. Correa, "Patent Law, TRIPS, and R&D Incentives: A Southern Perspectives", *CMH Working Paper Series, Paper No. WG2; 12*, University of Buenos Aires, November 2001.

Carlo M. Correa, (Nov. 2001), *TRIPS and R&D Incentive in the Pharmaceutical Sector*, University of Buenos Aires, Argentina.

- Peter Drahos, (2001) *The Universality of Intellectual Property Rights: Origins and Development*, University of London, Herchel Smith Senior Fellow, Queen Mary Intellectual Property Research Institute, Queen Mary and Westfield College, London, UK.

- S. Greif, "The Role of Patent Protected Imports in the Transfer of Technology to Developing Countries", (1979)10, 2 *IIC*.

- J. H. Jackson, W. J. Davey and A. O. Sykes, Jr. *1995 Documents Supplements to "Legal Problems of International Economic Relations"*, 1995 (3rd ed.) , American Casebook Series, West Publishing Co.

- Patricia Kameri-Mbote, *Patents and Developments*, published in Yash Vyas *et al.* eds., *Law and Development in Third World* (Nairobi: Faculty of Law – University of Nairobi, 1994).

- Arman S. Kirim, "Reconsidering Patents and Economic Development: A Case Study of the Turkish Pharmaceutical Industry", (1985)13, 2, *World Development*.

-H. Kronstein and I. Till, "A Re-evaluation of the International Patent Convention", (1947) 12 *Law and Contemporary Problems* .

- Hans Peter Knuz-Hallstein, "The Revision of the International System of Patent Protection in the Interests of Developing Countries", (1979)10, 6 *IIC* .

- Afifah Kusumadara, *Analysis of the Failure of the Implementation of Intellectual Property Law in Indonesia*, A dissertation submitted in fulfillment of the requirements for the degree of Doctor of Juridical Studies, Faculty of Law, University of Sydney, October 2000.
- S. Lall, "The Patent System and the Transfer of Technology To Less Developed Countries", (1976) 10 *Journal of World Trade Law (JWTL)* .
- F. Machlup and E. Penrose, "The Patent Controversy in the Nineteenth Century", (May 1950) Vol. X, No. 1, *the Journal of Economic History* .
- Fritz Machlup, *An Economic Review of the Patent System*, Study No. 15 of the US Sub-Committee on Patents, Trademarks and Copyrights, 85th Congress, 2nd Session, Washington D.C., US Government Printing Office, 1958.
- E. Mansfield, M. Schwartz and S. Wagner, "Imitation Costs and Patents: An Empirical Study", (Dec. 1981) 91 *Economic Journal*.
- E. Mansfield, "Patents and Innovation: An Empirical Study" (Feb. 1986) 32, 2 *Management Science* .
- J.E.S. Parker, *The Economics of Innovation. The National and Multinational Enterprises in Technological Change*, London, New York, Longman, 1978(2nd ed.).
- Edith Tilton Penrose, *The Economics of the International Patent System*, Baltimore, the Johns Hopkins Press, 1951.
- E. Penrose, "International Patenting and the Less Developed Countries " (Sept. 1973) 83 *Economic Journal*.
- Boulet, P., Perriens, J., Renaud-Thery, F., Veasquez, *Pharmaceuticals and the WTO TRIPS Agreement: Questions and Answers*, UNAIDS, World Health Organization, Geneva, March 2000.

- Dwijen Rangnekar, "No Pills for Poor People? Understanding the Disembowelment of India's Patent Regime", (Oct. 2005) *CSGR Working Paper No. 176/05*, University of Warwick, Coventry, U.K.
- B. Seyoum, "The Patent System and Transfer of Technology in East Africa: An Analysis with Particular Emphasis on Kenya and Tanzania", (1985) 16, 6, *IIC*. South Centre (1997), *The TRIPS Agreement: A Guide for the South. The Uruguay Round Agreement on Trade-Related Intellectual Property Rights*, South Centre, Chemin du Champ d'Anier 17, Geneva, Switzerland.
- C. T. Taylor and Z. A. Silberston, *The Economic Impact of the Patent System*, Cambridge University Press, 1973.
- Charles Twinomukunzi, "The International Patent System. A Third World Perspective", (1982) 22 *The Indian Journal of International Law (IJIL)* .
- H. Ulrich "The Importance of Industrial Property Law and other Legal Measures in the Promotion of Technological Innovation", (March 1989) *Industrial Property*, 102
- UNCTAD, *The International Patent System: the Revision of the Paris Convention for the Protection of Industrial Property Rights*, Report by the UNCTAD Secretariat, (28th June, 1977), *doc. TD/B/C.6/AC.3/2*.
- UNCTAD (1975), *The Role of the Patent System in the Transfer of Technology to Developing Countries*, Report by UN Dept. of ESA, UNCTAD and WIPO, *Doc. TD/AC.11/19Rev.1*.
- UNCTAD, *Report of the Group of Governmental Experts of the Role of Industrial Property System in the Transfer of Technology*, docs. *TD/B/C.6/24*; and *TD/B/C.6/AC.3/4*, (26 Oct. 1977), *Annex III " The Revision of the Paris Convention for the Protection of Industrial Property Rights: proposed and submitted by the experts from Cuba on behalf of the Group 77"*.

- UNCTAD, *The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Practices* , UN Pub., New York, 1981, TD/RBP/CONF./101 Rev. 1.
- UNCTAD, *Policies and Instruments for the Promotion and Encouragement of Technological Innovation*, A Preliminary Report by the UNCTAD Secretariat, (Supp. 1), doc. *TD/B/C.6/123*, 15 August 1984.
- UNCTAD/ICTSD, *Intellectual Property Rights and Development. Policy Discussion Paper*, UNCTAD/ ICTSD Capacity Building Project on Intellectual Property Rights and Sustainable Development, 2001.
- UNCTAD/ICTSD, *TRIPS and Development : Resource Book. Part Two: Substantive Obligations; 2.5 Patents*, UNCTAD/ICTSD Capacity Building Project on Intellectual Property Rights and Sustainable Development, December 2002.
- C. Vaitsos, "Patent Revisited: Their Function in Developing Countries" in C. Cooper (Ed.), *Science, Technology and Development. The Political Economics of Technological Advance in Underdeveloped Countries*, Frank Co., London, 1973.
- C. Vaitsos, "The Revision of the International Patent System: Legal Considerations for a Third World Position", (1976)4, 2, *World Development* .
- R. Vernon, *The International Patent System and Foreign Policy*, a study prepared for the United States Senate Committee on the Judiciary, 85th Congress, 1st Session, Washington D.C., 1957.
- Robert Weisman, "A Long, Strange TRIPS: The Pharmaceutical Industry Drive to Harmonize Global Intellectual Property Rules, and the Remaining WTO Legal Alternatives Available to Third World Countries" (1996) 17 *University of Pennsylvania Journal of International Economic Law*, at 1117.
- Wikipedia, the free encyclopedia, *Agreement on Trade-Related Aspects of Intellectual Property Rights*.

- WIPO, Model Law for Developing Countries on Inventions (vol.1), 1979, WIPO Pub. No. 840, E
- WIPO, *The Basic Proposals for the Treaty and The Regulations submitted under Rule 29(1) of the Draft Rules of Procedures, by the Director General of WIPO (PLT/DC/3) for the Diplomatic Conference for the Revision of the Paris Convention (to be held at Hague, June 3 to 28, 1991).* (Feb. 1991) *Industrial Property.*

Archive of SID