Among the different types of intellectual property, patents are considered the most valuable and rightly so. Patents provide the best form of protection for an invention and guarantee exclusive rights and benefits for a prescribed period of time, in return for which the patent holder has to disclose the invention in its entirety. The question of the impact of such a monopoly even if for a limited period on countries which are non-industrialized and less economically developed has been debated ever since the system has been in operation. Apart from exploitation of the market by the patent holders or their licensees, developing countries suffer from the fact that they themselves lack the skills, infrastructure and financial resources to uplift themselves to competitive levels through investments in innovation. Patents have been granted for inventions by many countries in the world ever since the first patent was granted in Venice, Italy in 1474. Despite the desire to have globally harmonized systems by bringing the working of national patent offices across the world together, they have remained distant and totally independent of others. While many efforts are on the anvil initiated by the WTO, WIPO and other international organizations for capacity building in the area of administration of an equitable IPR protection system among all the 154 member countries of the WTO, one of the important questions which is gaining support from some quarters is whether the grant of a single world patent which will provide protection to all the countries where the system is accepted would be of advantage to all countries. Even if the grant of such a world patent is not a viable option at the moment, is alternative of having a globally harmonized system and a common infrastructure for processing and granting patents feasible? Would such a system help or hinder development of economically less privileged countries?

**Attempts to Harmonize Global Patent Systems**

**Paris Convention and Patent Cooperation Treaty (PCT)**

The concept of harmonization was initiated as early as 1883 with the setting up of Paris Convention with just 11 countries to begin with, which at present has a membership of 173. The contracting states of the Paris Convention had the option of joining the Patent Cooperation Treaty (PCT) concluded in 1970 which provided for a uniform procedure for filing patent applications (PCT applications) with the priority date of first filing applicable in all the other member countries. As of end 2009, there were 142 members. The provision for single filing under PCT with priority date valid in all the other countries is of great benefit for applicants since in most cases at the time of filing an application most of the applicants are not sure of the real worth of the concerned invention. Savings in time and money can be quite substantial.

**TRIPS and its Role in Harmonization**

The TRIPS Agreement plays a major role in harmonization of the system of protection of all forms of intellectual property including patents. Under the terms agreed upon by the signatories of GATT, every member country is bound to comply with the minimum standards stipulated under the Agreement and consequently each member had to necessarily amend his national legislation to suit the requirements under the TRIPS Agreement. By and large, all the members have in place legislations which will meet the standards fixed under the TRIPS mandate, even though there have been some minor issues of non compliance on the part of some members including the very patent savvy developed countries. For example, even now the US has not

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complied with the TRIPS requirement of ‘first to file’ for determining priority of invention and still continues to apply the yardstick of ‘first to invent’ as the index.

TRIPS does provide for flexibilities in the implementation and interpretation of its provisions by member countries without prejudice to common minimum requirements on which there is no compromise. These are in the areas of protection of plant varieties and microorganisms, patentability criteria, provisions for issue of compulsory licenses both under TRIPS and under the DOHA Declaration.

**Patent Law Treaty**

Further attempts to harmonize the patent system were initiated by the conclusion of the Patent Law Treaty in 2000 in Geneva by 53 member states and the European Patent Office (EPO) to harmonize some of the formal procedures involved in filing patent applications by contracting states. As of end 2009, only 22 contracting states have implemented the treaty which includes UK, Australia, Switzerland, Sweden and France. Neither India nor US is a signatory to the Patent Law Treaty.

**European Patent Convention (EPC)**

The European Patent Convention and the EPO are perhaps the best examples of collective efforts to manage all intellectual property affairs by a single agency. EPC is a multilateral treaty that provides a single legal framework and a unified procedure for the prosecution and grant of the patent in all contracting countries of the European Union. With over 6500 staff members, the EPO handles over 250,000 filings per year, next only to the US and Japan Patent Offices. Established in 1977, the EPC aims at centralizing all activities for the contracting states including filing, prosecution, and grant. It operates a very large data bank for patent searches containing over 85 million documents and accepts applications in all languages. The Convention has set up a unified, flexible and user-friendly system catering to the needs of all members. Two recent developments have been the establishment of a network to work out a system of utilizing search results of other national patent offices in the interest of saving time and costs. EPO also helps China implement an effective IP protection system including support for judicial interventions when needed.

**Substantive Patent Law Treaty (SPLT)**

In November 2000, the Standing Committee on the Law of Patents (SCP) recommended that a draft provision for a future common legal instrument should focus initially on a number of issues of relevance to the grant of patents including the definition of prior art, novelty, inventive step, drafting claims and ensuring proper disclosure of the invention. WIPO in turn proposed a Substantive Patent Law aimed at harmonizing substantive points in patent law. In 2004, the US, Europe and Japan together with WIPO also initiated efforts to establish a global intellectual property infrastructure for globally harmonizing a system of patent administration including work-sharing among different patent offices. In 2006, a work-sharing project called Patent Protection Highway (PPH) was established by USPTO and JPO. The idea is primarily to utilize the search and examination facilities and expertise of one member by others. At the G-8 Summit in 2009, a working group underlined the importance of setting up a globally harmonized patent system acceptable to all members of WTO. The matter is under discussion by the WIPO General Assembly. It is unlikely that there will be consensus among the members since there are serious differences in perceptions on these issues among the developing and developed countries.

**World Patents**

In spite of sporadic efforts of various member countries, TRIPS Council, WTO, WIPO and other agencies there is very little chance of a single world patent being ever issued by any single authority. Further, it is unlikely that there will be even a consensus on the desirability of having a world patent which will offer protection to all the member countries who are parties to an agreement on such an operational system. While there will be no disputes on questions on uniform novelty standards for all countries, issues of uniform patentability criteria for grant of a patent would be subject to serious disputes. Most developing countries desire stricter standards of patentability to avoid monopolistic tendencies through the patent system as expressed under Section 3(d) of the Indian Patents Act 2005 which forbids patenting of trivial and incremental innovations. No member is likely to forego national rights and privileges and their jurisdiction. The next possible option is to have a harmonized system which will take care of all procedural matters
connected with the protection of intellectual property including common search for novelty, examination for inventive merits (non-obviousness), disclosure standards, scope of claims and evidence of potential industrial application.

Already a certain degree of harmonization has been achieved through the implementation of TRIPS. Regional agreements to have common prior art search and formal examination facilities as has been done under the EPC are distinctly possible and agreements between like minded countries could be of benefit to many developing countries to enable effective, less complex, faster and cheaper processing of patent examinations and grant.