

**AGREEMENT ON TRADE-RELATED ASPECTS OF
INTELLECTUAL PROPERTY RIGHTS**
Synopsis of Original Version and Proposals for Amendment
Last revised at ATRIP conference, Parma 4.-6. 9. 2006

Present Text	Proposals for Amendment
<p style="text-align: center;"><i>Article 2</i></p> <p style="text-align: center;"><i>Intellectual Property Conventions</i></p> <p>1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).</p> <p>2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.</p>	<p style="text-align: center;"><i>Article 2 [AMENDED]</i></p> <p style="text-align: center;"><i>Intellectual Property Conventions</i></p> <p>1. <u>[Wording deleted]</u> Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967) <u>and Articles 1 through 6, Articles 7 through 21 of the Berne Convention (1971) and the Appendix thereto.</u></p> <p>2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.</p>
<p style="text-align: center;"><i>Article 7</i></p> <p style="text-align: center;"><i>Objectives</i></p> <p>The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.</p>	<p style="text-align: center;"><i>Article 7 [AMENDED]</i></p> <p style="text-align: center;"><i>Objectives</i></p> <p>The protection and enforcement of intellectual property rights should:</p> <p><u>(a) contribute, in a manner conducive to social and economic welfare:</u></p> <p><u>(i) to cultural development and the enhancement of creativity, taking due account of the larger public interest, particularly in education, research and access to information and knowledge for all;</u></p> <p><u>(ii) to the promotion of innovation and technological progress, to the transfer of technology and to the dissemination of technology, information and knowledge;</u></p> <p><u>(iii) to the promotion of competition and fairness in trade in the interests of creators, authors, inventors and other producers, traders and consumers;</u></p> <p><u>(b) ensure, to the advantage of society as a whole, a balance of rights and obligations so that, in particular, the scope of the protection conferred by an intellectual property right</u></p>

	<p><u>corresponds to the contribution made to creativity, innovation and/or the functioning of markets.</u></p>
<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;"><i>Principles</i></p> <p>1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.</p> <p>2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.</p>	<p style="text-align: center;"><i>Article 8 [AMENDED]</i></p> <p style="text-align: center;"><i>Principles</i></p> <p>1. Members <u>should</u>, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.</p> <p>2. <u>Members shall take</u> appropriate measures, provided that they are consistent with the provisions of this Agreement, <u>[wording deleted]</u> to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.</p> <p>3. <u>Members shall provide for the necessary infrastructure for adequate and efficient systems for acquisition and maintenance as well as for opposition, revocation and declaration of invalidity of intellectual property rights, taking into account their economic, financial and administrative constraints and their respective level of development, and provided that the procedures applied are consistent with the provisions of this Agreement.</u></p>
	<p style="text-align: center;"><i>Article 8a [NEW]</i></p> <p style="text-align: center;"><u><i>Balance of Interests</i></u></p> <p>1. <u>Members shall take due account of the objectives and principles set out in Articles 7 and 8 when formulating or amending their laws and regulations. In doing so, they shall ensure that the protection granted reflects a fair balance between private economic interests and the larger public interest as well as the interests of third parties.</u></p> <p>2. Members shall ensure that users may,</p>

	<p><u>without the consent of the right holder, use protected subject matter, provided that such use does not unreasonably prejudice the legitimate interests of the right holder, taking into due consideration the normal exploitation of the right.</u></p> <p><u>(a) In particular, the following factors shall be taken into account for the admissibility of such use:</u></p> <p><u>(i) whether it contributes to the exchange of ideas and opinions;</u></p> <p><u>(ii) whether it contributes to the dissemination of information;</u></p> <p><u>(iii) whether it concerns the private sphere of the user;</u></p> <p><u>(iv) whether it results in the creation of value-added products and services that are not in direct competition with the protected subject matter.</u></p> <p><u>(b) The following factors shall also be taken into account:</u></p> <p><u>(i) to which extent the right holders and/or original creators are granted equitable and appropriate compensation under efficient and practicable mechanisms;</u></p> <p><u>(ii) whether the use recognises the dignity, the achievement and all the other personal interests of the original creator, be they moral or financial;</u></p> <p><u>(iii) whether the extent and intensity of the use is proportionate to its objectives.</u></p>
	<p style="text-align: center;"><i>Article 8b [NEW]</i></p> <p style="text-align: center;"><u><i>Interface Between Intellectual Property Rights and Competition Law</i></u></p> <p><u>1. For the purposes of maintaining a fair balance between intellectual property rights and free competition, Members shall provide for adequate remedies in the form of statutory or compulsory licences, or other forms of statutory limitations, if:</u></p> <p><u>(a) the use of the product protected by an intellectual property right is indispensable for competition in the relevant market, unless</u></p>

	<p><u>the application of such remedies would have a significantly negative effect on the incentives to invest in research and development; or</u></p> <p><u>(b) the use of an intellectual property right results in the abuse of a dominant position on the relevant market.</u></p> <p><u>2. To the extent that compliance with paragraph 1 depends on the establishment of an efficient system for control of competition, Article 8.3 shall apply <i>mutatis mutandis</i>.</u></p>
<p style="text-align: center;">PART II</p> <p style="text-align: center;">STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS</p> <p style="text-align: center;">SECTION 1: COPYRIGHT AND RELATED RIGHTS</p> <p style="text-align: center;"><i>Article 9</i></p> <p style="text-align: center;"><i>Relation to the Berne Convention</i></p> <p>1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6<i>bis</i> of that Convention or of the rights derived therefrom.</p> <p>2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.</p>	<p style="text-align: center;">PART II</p> <p style="text-align: center;">STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS</p> <p style="text-align: center;">SECTION 1: COPYRIGHT AND RELATED RIGHTS</p> <p style="text-align: center;"><i>Article 9 [AMENDED]</i></p> <p style="text-align: center;"><u><i>Protected Subject Matter</i></u></p> <p><u>[paragraph deleted]</u></p> <p>Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.</p>
<p style="text-align: center;"><i>Article 13</i></p> <p style="text-align: center;"><i>Limitations and Exceptions</i></p> <p>Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.</p>	<p style="text-align: center;"><i>Article 13 [NEW]</i></p> <p style="text-align: center;"><u><i>Limitations</i></u></p> <p><u>1. In accordance with Articles 7 to 8b, the protection conferred by copyright shall not extend to:</u></p> <p><u>(a) reproduction for purely technical purposes to the extent that this is necessary to enable communication and/or legitimate</u></p>

<p style="text-align: center;"><i>Article 14</i></p> <p style="text-align: center;"><i>Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations</i></p> <p>1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization:</p>	<p><u>use:</u></p> <p><u>(b) use made for the purpose of:</u></p> <p><u>(i) quotation from a work which has already been lawfully made available to the public;</u></p> <p><u>(ii) illustration for teaching and/or scientific research;</u></p> <p><u>(iii) news reporting;</u></p> <p><u>to the extent that this is necessary for the relevant purpose, provided that reference is made to the source, and notwithstanding the rights of the personal creator to have the work attributed to him and to oppose use that amounts to a massive and manifest mutilation of the work in its original form;</u></p> <p><u>(c) specific acts of reproduction made by publicly accessible libraries, educational establishments, museums or archives, which are not for direct or indirect economic or commercial advantage. Members may make reproduction dependent on payment of fair remuneration to the rightholders.</u></p> <p><u>2. Furthermore, the protection conferred by copyright shall not extend to personal use made in privacy, except for certain special cases where denial of protection would manifestly conflict with the principles set out in Article 8a.2, first sentence.</u></p> <p><u>3. Members may further restrict the protection conferred by copyright subject to the provisions of Articles 7 to 8b.</u></p> <p style="text-align: center;"><i>Article 14 [AMENDED]</i></p> <p style="text-align: center;"><i>Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations</i></p> <p>1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization:</p>
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the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers

the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

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4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Article 13 shall apply mutatis mutandis in relation to the rights conferred under paragraphs 1, 2 and 3. Reservations to the extent permitted by the Rome Convention are consistent with this Agreement. However, the provisions of Article 18 of the Berne Convention (1971)

<p>and producers of phonograms in phonograms.</p>	<p>shall also apply, mutatis mutandis, to the rights of performers and producers of phonograms in phonograms.</p>
<p style="text-align: center;">SECTION 2: TRADEMARKS</p> <p>.....</p> <p style="text-align: center;"><i>Article 17</i></p> <p style="text-align: center;"><i>Exceptions</i></p> <p>Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.</p>	<p style="text-align: center;">SECTION 2: TRADEMARKS</p> <p>.....</p> <p style="text-align: center;"><u>Article 17</u></p> <p style="text-align: center;"><u>Limitations</u></p> <p><u>1. In accordance with Articles 7 to 8b, the protection conferred by a trademark shall not extend to:</u></p> <p><u>(a) strictly non-commercial use[, with the possible exception of private possession and use of counterfeit goods];</u></p> <p><u>(b) use in the course of trade</u></p> <p><u>(i) for descriptive purposes, like indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services;</u></p> <p><u>(ii) in order to provide information in connection with sales of goods or services that are legitimately commercialised on the market concerned;</u></p> <p><u>(iii) for other marketing purposes providing relevant information, in particular comparative advertising;</u></p> <p><u>(iv) in a satirical or parodist manner or other modes of use covered by rules applying to freedom of speech and/or freedom of art in the Member concerned;</u></p> <p><u>provided that such use is in accordance with honest practices in industrial or commercial matters. In particular, use shall be deemed inadmissible that is likely to mislead the average consumer about the existence of a commercial link between the holder of the trademark and a third party.</u></p> <p><u>2. Members may further restrict the protection conferred by trademarks subject to the provisions of Articles 7 to 8b, provided that this does not impair the capability of trademarks to convey correct and reliable information as to the commercial origin of goods or services.</u></p>

<p>SECTION 4: INDUSTRIAL DESIGNS</p> <p>.....</p> <p><i>Article 26</i></p> <p><i>Protection</i></p> <p>1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.</p> <p>2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.</p> <p>3. The duration of protection available shall amount to at least 10 years.</p>	<p>SECTION 4: INDUSTRIAL DESIGNS</p> <p>.....</p> <p><i>Article 26 <u>[AMENDED]</u></i></p> <p><i>Protection</i></p> <p>1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.</p> <p><u>2. In accordance with Articles 7 to 8b, the protection conferred by design rights shall not extend to:</u></p> <p><u>(a) strictly private use;</u></p> <p><u>(b) acts of reproduction for the purposes of making citations, of teaching or of scientific research, provided that such acts are compatible with honest practices in industrial or commercial matters and do not unduly prejudice the normal exploitation of the design, and provided that reference is made to the source;</u></p> <p><u>(c) use in accordance with Article 27 of the Convention on International Civil Aviation of December 7, 1944*;</u></p> <p><u>2a. Members may further restrict the protection conferred by design rights subject to the provisions of Articles 7 to 8b.</u></p>
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* *Article 27*

Exemption from seizure on patent claims

(a) While engaged in international air navigation, any authorized entry of aircraft of a contracting State into the territory of another contracting State or authorized transit across the territory of such State with or without landings shall not entail any seizure or detention of the aircraft or any claim against the owner or operator thereof or any other interference therewith by or on behalf of such State or any person therein, on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is an infringement of any patent, design, or model duly granted or registered in the State whose territory is entered by the aircraft, it being agreed that no deposit of security in connection with the foregoing exemption from seizure or detention of the aircraft shall in any case be required in the State entered by such aircraft.

(b) The provisions of paragraph (a) of this Article shall also be applicable to the storage of spare parts and spare equipment for the aircraft and the right to use and install the same in the repair of an aircraft of a contracting State in the territory of any other contracting State, provided that any patented part or equipment so stored shall not be sold or distributed internally in or exported commercially from the contracting State entered by the aircraft.

(c) The benefits of this Article shall apply only to such States, parties to this Convention, as either (1) are parties to the International Convention for the Protection of Industrial Property and to any amendments thereof; or (2) have enacted patent laws which recognize and give adequate protection to inventions made by the nationals of the other States parties to this Convention.

	<p>3. The duration of protection available shall amount to at least 10 years.</p>
<p style="text-align: center;">SECTION 5: PATENTS</p> <p style="text-align: center;"><i>Article 27</i></p> <p style="text-align: center;"><i>Patentable Subject Matter</i></p> <p>1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.</p> <p>2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect <i>ordre public</i> or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.</p> <p>3. Members may also exclude from patentability:</p> <ul style="list-style-type: none"> (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective <i>sui generis</i> system or by any 	<p style="text-align: center;">SECTION 5: PATENTS</p> <p style="text-align: center;"><i>Article 27 [AMENDED]</i></p> <p style="text-align: center;"><i>Patentable Subject Matter</i></p> <p>1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention <u>[wording deleted]</u>.</p> <p>2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect <i>ordre public</i> or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.</p> <p>3. Members may also exclude from patentability:</p> <ul style="list-style-type: none"> (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective <i>sui generis</i> system or by any

<p>combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.</p>	<p>combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.</p>
<p style="text-align: center;"><i>Article 28</i></p> <p style="text-align: center;"><i>Rights Conferred</i></p> <p>1. A patent shall confer on its owner the following exclusive rights:</p> <p style="padding-left: 40px;">(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product;</p> <p style="padding-left: 40px;">(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.</p> <p>2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.</p>	<p style="text-align: center;"><i>Article 28 [AMENDED]</i></p> <p style="text-align: center;"><i>Rights Conferred</i></p> <p>1. A patent shall confer on its owner the following exclusive rights:</p> <p style="padding-left: 40px;">(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product;</p> <p style="padding-left: 40px;">(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.</p> <p style="padding-left: 40px;"><u>1a. The scope of a patent under paragraph 1 (a) shall be limited to the function disclosed in the description and drawings.</u></p> <p>2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.</p>
<p style="text-align: center;"><i>Article 29</i></p> <p style="text-align: center;"><i>Conditions on Patent Applicants</i></p> <p>1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where</p>	<p style="text-align: center;"><i>Article 29 [AMENDED]</i></p> <p style="text-align: center;"><i>Conditions on Patent Applicants</i></p> <p>1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where</p>

<p>priority is claimed, at the priority date of the application.</p> <p>2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.</p>	<p>priority is claimed, at the priority date of the application. <u>The claims for a product shall be limited to the function disclosed in the description and drawings.</u></p> <p>2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.</p>
<p style="text-align: center;"><i>Article 30</i></p> <p style="text-align: center;"><i>Exceptions to Rights Conferred</i></p> <p>Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.</p>	<p style="text-align: center;"><i>Article 30 [NEW]</i></p> <p style="text-align: center;"><u><i>Limitations</i></u></p> <p><u>1. In accordance with Articles 7 to 8b, the protection conferred by a patent shall not extend to:</u></p> <p><u>(a) strictly private use;</u></p> <p><u>(b) use to the extent necessary to study or test the functioning of the invention (reverse engineering) or experimentation on the invention to test or improve on it;</u></p> <p><u>(c) experiments during the patent term made for purposes of seeking regulatory approval for the marketing of a product after the expiration of the patent;</u></p> <p><u>(d) use of the invention for teaching purposes;</u></p> <p><u>(e) use of the invention to the extent necessary to repair an article;</u></p> <p><u>(f) the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared;</u></p> <p><u>(g) use of the invention by a third party that had used it bona fide, or had made serious preparations for that purpose, before the priority or filing date of the patent application;</u></p> <p><u>(h) use of the invention in accordance with Article 27 of the Convention on International Civil Aviation of December 7, 1944**.</u></p> <p><u>2. Members may further restrict the protection conferred by patents subject to</u></p>

** For the text of Article 27 of that Convention see above, footnote to Article 26.2.

	<u>the provisions of Articles 7 to 8b.</u>
<p style="text-align: center;">SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES</p> <p style="text-align: center;"><i>Article 40</i></p> <p>1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.</p> <p>2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.</p> <p>3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually</p>	<p style="text-align: center;">SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES</p> <p style="text-align: center;"><i>Article 40 [AMENDED]</i></p> <p>1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.</p> <p>2. <u>Members shall adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of the Member concerned. Members may specify in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market.</u></p> <p>3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually</p>

<p>satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.</p> <p>4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.</p>	<p>satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.</p> <p>4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.</p>
<p style="text-align: center;">PART III</p> <p style="text-align: center;">ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS</p> <p style="text-align: center;">SECTION 1: GENERAL OBLIGATIONS</p> <p style="text-align: center;"><i>Article 41</i></p> <p>1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.</p> <p>2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.</p> <p>3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.</p>	<p style="text-align: center;">PART III</p> <p style="text-align: center;">ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS</p> <p style="text-align: center;">SECTION 1: GENERAL OBLIGATIONS</p> <p style="text-align: center;"><i>Article 41</i></p> <p style="text-align: center;"><u><i>Enforcement Procedures [HEADLINE ADDED]</i></u></p> <p>1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.</p> <p>2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.</p> <p>3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.</p>

<p>4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.</p> <p>5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.</p>	<p>4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.</p> <p>5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.</p>
	<p style="text-align: center;"><i>Article 41a [NEW]</i></p> <p style="text-align: center;"><u><i>Remedies Against Abuse of Intellectual Property Rights</i></u></p> <p><u>Members shall provide for proportionate, efficient and deterrent remedies against abuse of intellectual property rights, in particular the making of unjustified threats.</u></p>
	<p style="text-align: center;"><i>Article 41b [NEW]</i></p> <p style="text-align: center;"><u><i>Jurisdiction and Choice of Law in Transborder Conflicts in Intellectual Property Matters</i></u></p> <p><u>1. Members shall ensure that, subject to compliance with principles of due process and of fair balance between the interests of the parties, the rules applied with regard to jurisdiction in transborder conflicts in intellectual property matters do not unduly hamper an efficient pursuit of justice.</u></p> <p><u>2. Members shall ensure that the rules applied with regard to choice of law in transborder conflicts in intellectual property matters pay due respect to the territoriality principle, thereby acknowledging the sovereign power of other Members to regulate, within the boundaries of obligations resulting from international agreements, the law governing acquisition, scope and content</u></p>

	<p><u>of intellectual property rights with regard to their respective territories. As a matter of principle, this results in the application of the law of the country for which protection is sought (<i>lex protectionis</i>).</u></p> <p><u>3. Derogation from <i>lex protectionis</i> shall only be permitted</u></p> <p><u>(a) on the basis of an agreement between the parties, to the extent that is deemed acceptable with a view to the specific nature of the intellectual property right concerned, or to intellectual property rights as such;</u></p> <p><u>(b) to the extent that, with regard to the ubiquitous nature of an infringement, the application of <i>lex protectionis</i> would result in serious impediments for a fair and efficient enforcement of intellectual property rights.</u></p>
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