

# Introduction: debating IPRs

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## 1. THE LESSONS OF HISTORY: WAVES OF IP DEBATES

If a Martian (or any kind of extraterrestrial for that matter) were to visit earth for the first time and be exposed to some of the debates that are currently taking place in the IP domain, he would undoubtedly think that there is something very peculiar with the system. After all, if something as ‘technical’ and ‘legalistic’ as IPRs draws so much attention, then surely there is either more to the system than meets the eye, or the system is relatively new and therefore requires modifications. If the same Martian were to visit earth sooner – say in the 17th century (1623 to be exact) – when section 6 of the *Statute of Monopolies* was passed in Britain, then he would have probably understood that the system is far from new and would thus have eliminated the second explanation.

After all, the Statute of Monopolies – which at the time revoked all rights to private monopolies under the British dominium and established that the British Crown has the sole authority to grant such monopolies, has made an exception with regard to patented inventions.

Any declaration before- mentioned shall not extend to any letters patents (*b*) and grants of privilege for the term of fourteen years or under, hereafter to be made, of the sole working or making of any manner of new manufactures within this realm (*c*) to the true and first inventor (*d*) and inventors of such manufactures, which others at the time of making such letters patents and grants shall not use (*e*), so as also they be not contrary to the law nor mischievous to the state by raising prices of commodities at home, or hurt of trade, or generally inconvenient (*f*): the same fourteen years to be accounted from the date of the first letters patents or grant of such privilege hereafter to be made, but that the same shall be of such force as they should be if this act had never been made, and of none other.<sup>1</sup>

But if the system of IPRs is more than five centuries old, what makes it so fraught with emotion that every generation occupies itself with new debates on IPRs, which are often as emotional as they are rational?

Indeed, the current debates on IPRs are vast and diverse, as will hopefully be demonstrated in this book. However, before outlining some of the themes that will be discussed in the ensuing chapters, it may be useful to remember that such debates have been on the agenda for at least two centuries.

In a paper entitled *The Patent Controversy in the Nineteenth Century*,<sup>2</sup> Fritz Machlup and Edith Penrose, two of the most prominent scholars of IPRs in the early 1950s, have described some of the most intense debates over patent protection in the 19th century. It is worth noting what Machlup and Penrose said about the great patent debates of the 19th century when referring to the debates that took place in the US Congress during the 1940s and 1950s:

In recent publications [in the 1950s – author’s note] commenting on these discussions it has been suggested that opposition to the patent system is a new development. A writer of a ‘history’ of the patent monopoly asserted that ‘there never has been, until the present time, any criticism of this type of “exclusive privilege” . . .’.

In actual fact, the controversy about the patent of invention is very old, and the chief opponents of the system have been among the chief proponents of free enterprise. Measured by the number of publications and by its political repercussions – chiefly in England, France and Germany, Holland and Switzerland – the controversy was at its height between 1850 and 1875. The opposition demanded not merely reform but abolition of the patent system. And for a few years it looked as if the abolitionist movement was going to be victorious.<sup>3</sup>

The great patent debate of the 19th century sowed the seeds of the debates that followed in the 1950s, 1970s and up to the present. The patent debate of the 19th century covered it all – philosophical, ethical and legal aspects. It was also the time when economic arguments were put to use and from which a whole new specialization in the economics of IPRs emerged. Machlup and Penrose talk about four dimensions in which the patent debates took place: 1. the natural property right in ideas; 2. the just reward to the inventor; 3. the best incentive to invent, and 4. the best incentive to disclose secrets. Each of these dimensions saw argument for and against the patent system.

To note two dimensions: the notion *natural property right in ideas* and the *incentive to disclose secrets*.

The notion of *natural property right in ideas* was probably first manifested in 1791 France, in which patent rights were linked explicitly to the notion of property. Right number 17 of the *Declaration of the Rights of Man and of Citizens*, as adopted by the French Constitutional Assembly, states: ‘the

right to property being inviolable and sacred, no one ought to be deprived of it, except in cases of evident Public necessity, legally ascertained, and on condition of a previous just indemnity'.<sup>4</sup> In that year the French Constitutional Assembly also adopted a new patent law which stated that 'every novel idea whose realisation or development can become useful to society belongs primarily to him who conceived it, and that it would be a violation of the rights of man in their very essence if an industrial invention were not regarded as the property of its creator'.<sup>5</sup> Machlup and Penrose tell us that some advocates of IPRs, such as Stanislas de Bouffler went as far as arguing that intellectual property is superior to plain material property: 'invention, the source of arts, is also the source of property: it is primary property, while all other property is merely conventional'.<sup>6</sup> The economist, Henry Macleod, another advocate of patents argues that 'the production of a man's mind are now recognized to be as truly his own property and the fruits of his industry as the production of material wealth' and that 'it is hard to see on what grounds he can be denied the same tenure in one as in the other'.<sup>7</sup>

Critiques of the patent system did not leave unchallenged the notion that intellectual property is equal to physical property. R.A. Macfie, one of the leaders of the patent abolitionist movement, argued that 'if there were any "natural rights" in connection with inventions it would be the inventor's "right to use his own invention"'. Macfie argued that not only is the patent system not a manifestation of a natural right, but rather that under this system 'all too often an inventor find himself barred from using his own idea because someone else has obtained a patent on it'.<sup>8</sup> Opposition to the notion of natural property in ideas also came from the social progress movement which held the view that since social progress is much more important for the creation of inventions than the individual inventor, any system of pecuniary rewards for inventors, such as patents, is completely inadequate. J.L. Ricardo, an advocate of the social progress perspective argued that since 'nearly all useful inventions depend less on any individual than on the progress of society' there is no need for it to 'reward him who might be lucky enough to be the first on the thing (invention) required'.<sup>9</sup> *The Economist*, which at the time sympathized with this line of argument, noted in an 1850 issue that before the inventors

can establish the right of property in their inventions, they ought to give up all the knowledge and assistance they have derived from the knowledge and inventions of others. That is impossible, and the impossibility shows that their minds and their inventions are in fact, parts of the greater mental whole of society . . .<sup>10</sup>

Another dimension that fuelled the debate in the 19th century focused on the *incentive to disclose secrets*. To some degree this discussion has emerged

from the more fundamental economic debates about the extent to which the patent system provides incentives for and optimizes the rate of inventive activity on the one hand, and the opportunity and social costs that are associated with these activities on the other hand.<sup>11</sup> When addressing the issue of the incentive to disclose secrets, advocates of the patents system described it as a social contract. The social contract argument derived from the teachings of the French philosopher Jean Jacques Rousseau.<sup>12</sup> The Social Contract argument was adapted to the patent system by French economists such as De-Bouffler and Louis Wolowski. The latter, for example, argued that ‘the patent system constitutes a genuine contract between society and the inventor. If society grants him a temporary guaranty, he discloses the secret which he could have guarded; quid pro quo, this is the very principle of equity’.<sup>13</sup>

Opponents of the patent system, such as Rogers, Prince Able Smith and Rentzsh had equally persuasive counter-arguments. They have suggested the possibility that if an inventor is able to keep his invention secret for a period longer than that granted by patent term, he would be reluctant to disclose his invention to society (a well-noted example is the case of Coca-Cola, which prefers to keep its formula secret rather than applying for patent protection). They argued that it is likely that an inventor will apply for a patent mainly when he believes that he will not be able to keep his invention secret for a period that is longer than, or at least equal to, that of the patent term. Rogers, for example, attacked the notion of the social contract, as portrayed by patent advocates, and argued that this contract is extremely one-sided since an inventor can choose to disclose his invention to society only if he expects that his profit will exceed the alternative of exploiting his invention in secret. He thus concluded that ‘no one can call that a fair bargain which is voluntary on one side, and involuntary on the other’.<sup>14</sup>

The debates of the 19th century did not solve the problems of the patent system. On the contrary, the controversies surrounding the patent system and IPRs as a whole have spilled over to our present century.

The 1950s brought a new wave of IP debates in the United States. During 1957 and 1958 the Subcommittee of Patents, Trademarks and Copyrights, of the Committee on the Judiciary – US Senate, held a series of discussions over the role of the system of IPRs and their impact on the industrial strength of the nation. Distinguished IP scholars, most of which were economists, such as Allen, Machlup, Melman, Palmer, Vernon, submitted to the Subcommittee highly detailed reports on the patent system.<sup>15</sup> These reports (15 altogether) laid out, or at least re-stated, the theoretical and academic foundations for the economic study of IPRs (though economists, such as Arnold Plant and Michael Polanyi provided fascinating discussions about the economics of patents in the 1930s and 1940s).<sup>16</sup>

However, despite their efforts, Machlup and his peers could not reach a definite conclusion about the prospects of IPRs. In the concluding remarks of his 80-page report Machlup apologized before the Subcommittee given that ‘the statements winding up the discussion in the preceding section look like a disappointingly inconclusive conclusion of a rather lengthy economic review of the patent system’.<sup>17</sup> After all, it was Machlup who concluded in the same report that ‘no economist on the basis of present knowledge, could possibly state with certainty that the patent system, as it now operates, confers a net benefit or a net loss to society’.<sup>18</sup> Over the years this rather famous conclusion has been quoted repeatedly by different academics. Vernon, who focuses more on the economics of patents in the international system, expressed strong self-criticism about his ability to enlighten the Subcommittee. Vernon considered the lack of sufficient data as one of the most serious problems in economic study of IPRs, stating that ‘we plunge into this analysis with one major misgiving. Policy towards the international patents system turns heavily on an appraisal of its economic impact, and much of the data needed in order to consider this impact objectively is lacking or inadequate’.<sup>19</sup> Therefore, he adds, ‘the contentions in favour of extending the rights patentees suffer from the basic deficiency, no less than the contentions in favour of curtailing them.’<sup>20</sup>

The 1970s put the third wave of IP debates into the context of the North–South divide. In a series of publications, the United Nations Conference of Trade and Development (UNCTAD), representing the bulk of developing countries, vigorously flagged up the effect of IPRs on developing countries. One can recall publications such as *The Role of the Patent System in the Transfer of Technology to Developing Countries – 1975*; *Major Issues in the Transfer of Technologies to Developing Countries – A Case Study of the Pharmaceutical Industry – 1975*; *The Role of Trade Marks in Developing Countries, 1979*.<sup>21</sup> However, despite their critical approach to the impact of IPRs on developing countries, the UNCTAD studies did not seem to offer an alternative, practical policy for the IP system. Nor did they extend beyond the scope of an academic discussion (albeit a very interesting one).

It would seem that we are now facing the fourth wave of IP debates, which for lack of a better term we might refer to as the ‘Millennium IP debate’. This debate is far from over, and its boundaries are yet to be defined. Its origins, however, can be traced to the TRIPS agreement and its aftermath.

The inclusion of an agreement on trade-related aspects of intellectual property rights (TRIPS) under the auspices of the World Trade Organization was one of the most innovative and controversial elements of the multilateral trading system. Signed in Marrakesh (15 April 1994) as annex 1C to the final act establishing the WTO, the TRIPS agreement represents

a significant increase in the global level of intellectual property protection and is considered to be a 'revolution in international intellectual property law'.<sup>22</sup>

The process of implementing the TRIPS agreement by developing and least developed countries is a painful one, particularly in the area of pharmaceutical patents. Much controversy surrounds the linkage between patents and access to medicines. The debate over the extent to which the internationalization of IPRs affects the ability of poor countries to gain access to affordable medicines has extended beyond the domain of trade policy. This debate has become as emotional as it is rational, and encompasses legal and health issues and even questions of business ethics and morality.

The Millennium IP debate promises to be wide in scope and full of heat. It will encompass issues across the board, such as incentives to innovation, industrial development, trade policy, access to available technologies, and effective commercialization in the age of knowledge-intensive industries. In this wave, like the IP debates that precede it, the virtues and flaws of the system will be emphasized, discussed and celebrated.

## 2. THE MILLENNIUM IP DEBATE – IS THERE ANYTHING NEW UNDER THE SUN?

Is there any point at all in collecting essays that represent different aspects and perspectives of contemporary IP issues? Given the depth and scope of past debates should we not try to compile a book that focuses on historical debates rather than on contemporary ones? After all it was Machlup and Penrose who had admitted – bravely – that 'despite all the changes in the economic scene, our thinking on the subject has hardly changed over the century'.<sup>23</sup>

There is certainly a need to recall some of the old debates. As argued above, one would only stand to benefit from the lessons history can teach.

However, there is also an equal need to capture some of the issues presently being debated. While many aspects of the IP debates remain the same throughout history (and there is also a considerable chance that they remain so in the future), other elements have been influenced by a natural evolutionary process of creating, distributing and utilizing knowledge and information – the subject matter of IPRs. Four elements are particularly worth mentioning.

First, the unit of analysis has shifted from the individual to the organizational unit (be it a company, a research institution or a University). Consequently, the relationships governing the field of IPRs have become

more complex. It is self-evident that as we progress we are focusing less on the individual inventor and more on the process of ‘organized innovation’ (or what we simply refer to as R&D). This is not to say that individuals are not important. By all means they are! Inventive activities cannot be done without the ingenuity of the human mind (at least at present). However, as the process of innovation takes place by an organized unit, the importance of one individual (even if he is the undisputed ‘brain’ behind the technology) is diminishing. This observation is far from being original (and again no one said it was). As far back as 1940 Alfred Khan had already pointed to this change:

The systematic, planned experimentation which characterizes modern technological method, swifter and surer than the old, has enhanced the interdependent, cooperative nature of invention. Technology has become so vast and so complex that the individual is more than ever dwarfed in relation to it. Invention has in addition become much more consciously cooperative. In the great modern research laboratories, tens, hundreds of men focus upon single, often minute problems. With scientific organization thus systematically mulling over all the well-known problems, inventions become increasingly inevitable. It become[s] more than ever impossible to isolate any one contribution as the invention or any one man as sole inventor and rightful patentee. . . . Hence inventors are for the most part trained salaried professionals, hired to learn and to work in the great laboratories provided by those who can afford them. Patents are automatically assigned to the corporation which pays the salaries and provides the facilities. Because it takes the risks, the business takes the speculative reward.<sup>24</sup>

We should also note that R&D activities that ultimately led to the creation of knowledge-based products are influenced by other factors, such as capital, infrastructure, manufacturing capacity, market presence, logistical abilities and competition. These are as important, and at times more important than the process of knowledge creation as a whole. If semantics are of importance (and they usually are) perhaps it would have been better if, today, we should treat IPRs as OPRs – that is organization property rights. And, without getting into a discussion of what it means to consider IPRs (OPRs) at the organizational level, suffice it to say that the interests and incentives to create, utilize and distribute IPRs by an organization are not necessarily the same as those of the individual. For example, it is sometimes surprising to observe how different debates on the effect of IPRs – say in the corporate world (for example in the pharmaceutical and IT companies) – focus on the ‘individual nature’ of corporate IP owners, portraying them either as ‘benign’ or ‘malign’ (depending on one’s perspective). It is in the heat of such debates that we tend to overlook one very significant factor – that all commercial companies, regardless of their orientation, share one common denominator – profit! Therefore, it is

overdue that modern discussions should reflect this change in the unit of analysis.

Second, patents are no longer the only form of IPRs that are worth discussing, especially with regard to policy-making issues. Traditionally, policy-making aspects of IPRs have been equated with patents, as for example with regard to the TRIPS agreement (even this author has committed this unfair act when focusing on patents and trademarks in his previous book). This is not to say that there are no works or writings on other forms of IPRs, especially copyrights and trademarks (one can only look at the writings of Plant, Schechter and Chamberlin on trademarks in the first half of the 20th century).<sup>25</sup> But patents have always been considered the most controversial and sexy subject in the IP domain, and hence have received much more attention. This is no longer the case. Copyrights, trademarks, geographical indications and other forms of sui-generic protection (such as pharmaceutical data exclusivity) are rapidly gaining their rightful place under the sun, not least because they are associated with some of the most intriguing and heated debates in the Millennium era. Their economic rationale, legal manifestation and social uses (and abuses) should be addressed more frequently in policy discussions.

Third, it is a paradox (though a natural one) that as specialization and professionalism in the IP field increase they ultimately lead to a detachment between different elements and themes of IPRs, which are becoming more and more 'divorced' from one another. IPRs today affect the micro and macro levels. They can be thought of or learnt about from various perspectives and schools of thought, including economics, law, finance, management, entrepreneurship and accounting. Expertise in the field of IP is a hot commodity in many areas, such as trade policies, industrial policies, technology transfer, product development, health care, music, films the webspace, traditional knowledge and many others. However, as each subject develops naturally into its own micro-cosmos, the field as a whole is becoming increasingly fragmented. Therefore, it is very important to try inducing and to reintroduce an interaction between different IP themes, as this would allow us to obtain a more comprehensive view on the IP field as a whole.

Finally, contemporary debates on IPRs are predominantly influenced by external factors, the result of the age in which we live. It is these events that influence our perceptions of IPRs and not vice versa. Had the internet not been developed, the entire conflict of downloading and copyright infringement would not have become an issue. This is also the case with regard to pharmaceutical IPRs and the issue of access to medicines in least developed countries. It is the disastrous state of poverty and disease in sub-Saharan Africa (and obviously the fact that we know about it) that brings

about the heated debates about IP policies in this field. This was not the case 50 years ago. Regardless of how trivial and banal this may sound, IPRs are but one of many factors that affect a particular situation. And no matter if we view them as part of the solution or as part of the problem, IPRs are never the only factor – the silver bullet – and sometimes not even the most important factor. This should be taken into account and remembered even when focusing solely on IPRs, as this book does.

### 3. THE STRUCTURE OF THIS BOOK

Grouping various IP contributions into distinct and homogeneous categories is not an easy task, not least because each contribution touches upon different aspects of IPRs. Nevertheless, an attempt has been made to structure this book in a manner that would allow readers to be exposed to some of the thematic and topical aspects of the contemporary discussions in the field.

The book comprises five broad sections, two of which are thematic (trade investment and enforcement policies; valuation, commercialization and public–private partnerships) and three are topical (patents, pharmaceuticals and biotechnology; access, competition and antitrust in the information society as well as geographical indications).

Section one – trade, investment and enforcement policies of IPRs – deals with the international aspects of IPRs. Michael Blakeney provides an analysis of the 10-year-old TRIPS agreement, focusing on the promise of ‘promoting technological innovation and the transfer and dissemination of technology, to the mutual advantage of producers and users in a manner conducive to social and economic welfare’ (TRIPS, Article 7). He is critical of the veracity of this promise, particularly with regard to developing countries. Brian Hindley discusses the economics of IPRs and considers the case for an international IP system, such as that established by the TRIPS agreement. He concludes, that 10 years after its coming into force, the TRIPS agreement is still much more beneficial to developed right-holder countries than to developing ones. Douglas Lippoldt considers the empirical linkage between national IP environments, international trade and foreign direct investment (FDI). He finds that, overall, stronger IPRs tend to boost trade, FDI and licensing activities in developing countries, while also emphasizing that IPRs cannot be treated as a ‘silver bullet’ development solution. Paul Vandoren and Pedro Velasco Martins provide a right-holder perspective on the issue of global IP enforcement, focusing on the new enforcement strategy of the EU. They argue that in the coming years the EU is likely to adopt a more proactive enforcement strategy of IPRs outside its borders.

Section two – IPRs, business and public–private partnerships – focuses on the business aspects of IPRs across different media. Richard Rozek and George Korenko outline the different methods of evaluating the dollar worth of IP (knowledge) assets – that is the cost, market and income approaches. They identify the income approach as one that is accepted across most forums, and illustrate two methods for its application that will help companies prepare robust valuations of their IP assets. Grant Isaac provides a critical assessment of the scale neutrality of IPRs, and enumerates the different factors that affect the ability of companies to engage in successful exploitation of IPRs, particularly small and medium-sized enterprises (SMEs). He concludes that, from a broader policy perspective, the lack of scale neutrality in the patent policy instruments negatively affects the innovative and commercial abilities of SMEs. Richard Rozek and Bridget A. Dickensheets discuss the complementary functions performed by academic, government and private industry scientists and provide examples of market-based methods that are used to transfer technology among the three sectors. To facilitate cooperation between sectors, they conclude that public policy should focus on the protection of IPRs and free market principles rather than price regulation or other controls. Robin Blatt provides an overview of US technology transfer policies within the university setting. She explores the contemporary opportunities, challenges and conflicts that have emerged as a result of the goal towards privatization and commercialization of early stage government-funded R&D within the university setting. She argues that Universities in the US have reached an historic juncture where contemporary technology transfer policy issues require active re-examination.

Section three – IPRs, pharmaceuticals and biotechnology – covers some of the heated issues that are currently being debated in these fields. David Goren discusses the question of achieving a new balance between rewarding innovative pharmaceutical research, while meeting the needs of a growing public demand for innovative health care solutions at lower prices. He argues that any solution to the current health care IP crisis requires that society maintain the appropriate profit motive in rewarding innovation and allows the free market to operate properly, while balancing public interest. Eric Noehrenberg provides a right-holder analysis to the question of patents and access to medicines in developing countries, particularly with regard to the patentability of essential medicines, the prices of generic drugs and the criticism of the TRIPS agreement and access to medicines. He concludes that for too long IPRs (and patents in particular) have been blamed for the on-going health crisis in poor countries, while other, more significant factors, have been overlooked and ignored, sometimes intentionally. Trevor Cook discusses the issue of gene patents and gene-sequence patents from

the perspectives of European and United States patent laws. He argues that the ‘Ginny’ of gene patenting is far from being evil, or unusual for that matter. He suggests that one should be wary of legislation that is based either on anecdotal concerns that have been inadequately analysed, or on historical considerations that have little relevance for the future.

Section four – IPRs, competition, access and antitrust in the age of the information society – considers some of the tensions and disputes arising from the regulation and protection of IPRs in the era of rapid and dramatic digital, electronic and web-based technological developments. Duncan Curley provides a critical assessment of the European approach towards balancing the protection of IPRs on the one hand and safeguarding EU competition law, including the use of antitrust mechanisms, on the other hand. He finds that the recent EU actions in this field, such as in the case of Microsoft, run the risk of eroding the exclusivity granted to IP owners and may even upset the delicate balance between competition law and the need to preserve incentives to innovate offered by IPRs. Uma Suthersanen considers how technological development affects different stakeholders and influences their policy-orientated behaviour towards the design of IPRs. She finds that the emergence of new technologies in the digital and internet media, as in the case of file sharing, is usually accompanied by a sense of hysteria concerning the threat of copyright infringement. She argues that demands to impose penalties and remedies on those who create and provide these technologies should be carefully balanced against their overall contribution to the economy as a whole. Guido Westkamp analyses the extent to which the technological changes in the information society affect and alter traditional structures of copyright law and exclusive rights in general. He finds that the current inherent tensions in copyright law are now subject to a novel evaluation, which places more emphasis on control over information than the requirement for a substantive analysis of copyright infringement. Nevertheless, he argues that although the inherent architecture of copyright might have shifted towards an all-embracing control right over information, it remains doubtful whether such shift will, in future, be upheld.

Section five – IPRs and geographical indications (GIs) – focuses on this fascinating form of intellectual property, which thus far has not received adequate coverage in the literature (at least in terms of volume). Michael Blakeney provides an historical overview of the evolution of GIs from a very basic form of trademark to a stand-alone IP right, which is regulated and standardized by the TRIPS agreement. Considering the merits of GIs for developing countries, he suggests that although an expansion of the products covered by GIs arguably serves the interests of EU countries, overall in the package of TRIPS norms, GI protection comes closest to

developing countries' policy interests, and could also boost the protection of traditional knowledge. David Vivas Eugui and Christoph Spennemann consider the international regulation of GIs in recent regional and bilateral free-trade agreements. They find that the EU and US regional trade agreements serve as good illustrations of the recent shift in international IP policy-making away from the multilateral (WTO/WIPO) forum to the regional and bilateral levels. They suggest that developing countries should be wary of this phenomenon and that these countries should carefully assess whether the ensuing GI obligations under these agreements correspond to their economic and societal priorities. Phil Evans provides a consumer-perspective analysis of GIs in general and of the tension between GIs and trademarks in particular. He argues that in analysing the phenomenon of GIs, one should also adopt a competition policy perspective, which would allow one to deconstruct the incentive structures that GIs create in agricultural markets and to discuss the impact that GIs have on competition in product markets. He concludes that the WTO TRIPS regime that allowed the present anti-competitive nature of the GI system to impose itself globally, would also be to the detriment of consumers in Europe and elsewhere.

#### 4. LIMITATIONS OF THIS BOOK

In the epilogue of his highly controversial book, *The Secret Agent*, which was first published in 1907, Joseph Conrad says the following: 'I have always had a propensity to justify my action. Not to defend. To justify. Not to insist that I was right but simply to explain that there was no perverse intention, no secret scorn for the natural sensibilities of mankind at the bottom of my impulses.'<sup>26</sup>

It is in the same light, and without being apologetic, that self-criticism should be expressed about the methodological constraints and the limitation of substance that are part of this book.

Methodologically speaking, the book may, at times, be viewed as having an imbalance, in the sense that it does not reflect all the views that may be expressed on a given subject or debate. For example, it is possible to argue that the discussions on pharmaceutical IPRs reflect a more positive perception while the discussion on GIs tends to emphasize negative views on the subject.

There are three explanations for this. First, like any publication that is based on contributions, this book also reflects the Editor's ability to approach authors and secure contributions. To this extent, any criticism on the non-objectivity of the book should ultimately be attributed to the

shortcomings of the Editor, not the authors. Second, to some extent this book seeks to emphasize views which are not as frequently mentioned and expressed as other themes. For example, it would seem, at least to this author, that criticism of pharmaceutical IPRs appears more frequently in the academic literature than right-holders' perspectives, which usually appear in more professional publications. Finally this book is not objective as it reflects the views of the person who envisaged this project. After all Conrad begins his epilogue by saying that 'the Origin of the Secret Agent: subject, treatment, purpose and every other motive that may induce an author to take up his pen, can, I believe, be traced to a period of mental and emotional reaction'.<sup>27</sup> This book is no different. Nevertheless, and in spite of the above, it can be argued with a degree of certainty that, overall, this book does provide a balanced or at least comprehensive picture of different IP debates. Moreover, it is also possible that the cross-subject linkage that is created in this book – for example the linkage between the thematic issue of trade policy of IPRs and topical issues, such as pharmaceutical IPRs, copyrights and GIs, enhances the overall balance of this book, as some views that are not expressed in one section are expressed in other sections.

With regard to limitations of substance, arguably this book could have covered many other topics, as well as much more ground on each topic. That other subjects and issues of disputes do not appear in this publication does not suggest that they are unimportant. Some may also argue that the book should have focused on issues other than those covered here. That is all true. Yet no book is perfect and this one certainly does not presume or intend to be. And, be that as it may, it is hoped that the 'plat du jour' presented in the book will be attractive enough to open up and develop the appetite of those who take an interest in the field.

## NOTES

1. English Statute of Monopolies (1623), section 6a.
2. Penrose, E., Machlup, F., 'The patent controversy in the nineteenth century', *Journal of Economic History*, vol. X:1 (May 1950), pp. 1–29.
3. *Ibid.*, p. 1.
4. Declaration of The Rights of Man and of Citizens by the National Assembly of France (1791).
5. Penrose and Machlup (op. cit.), p. 11.
6. *Ibid.*
7. Macleod, H.D., *Elements of Political Economy* (1858), p. 182.
8. Penrose and Machlup (op. cit.), p. 15; Macfie, R.A., *The Patent Question Under Free Trade*, 2nd edition, (London: 1864), p. 8.
9. *The Economist* (26 July 1851: 812); Also see: Penrose and Machlup (op. cit. 18).
10. *The Economist* (28 December 1850), p. 1434.

11. This debate which has ignited the economic study of IPRs and which has spilled over to the 20th and 21st centuries is discussed at length in Pugatch, M.P., *The International Political Economy of Intellectual Property Rights* (Cheltenham, UK and Northampton, MA, USA: Edward Elgar, 2004).
12. Jean Jacques Rousseau, *The Social Contract* (London : Penguin, 1762).
13. Penrose and Machlup (op. cit.), p. 26.
14. Rogers, J.E.T., 'On the rationale and working of the patent laws', *Journal of Statistical Society of London*, XXVI (1863), p. 128.
15. Machlup, F., *An Economic Review of the Patent System*, Study of the Subcommittee on Patents, Trademarks and Copyrights of the Committee on the Judiciary, United States Senate, 85th Congress, Second Session, Study No. 15 (Washington DC: 1958); Vernon, R., *The International Patent System and Foreign Policy*, Study of the Subcommittee on Patents, Trademarks and Copyrights of the Committee on the Judiciary, United States Senate, 85th Congress, Second Session, Study No. 5 (Washington DC: 1957).
16. Plant, A., 'Economic theory concerning patents', *Economica – New Series*, vol. I (1934), pp. 30–51; Polanyi, M., 'Patent Reform', *Review of Economic Studies*, vol. 11 (1944), pp. 61–76.
17. Machlup, F. (1958), p. 79.
18. Ibid.
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