

*The Trans-Pacific Partnership:
Experimental Use of Patents on the International Agenda*

Ofer Tur-Sinai

Doctor, Ono Academic College
Kiryat, Israel

As the secret negotiations of the Trans-Pacific Partnership Agreement ("TPP") between the United States and eleven other nations approach final stages, the recent release of the draft Intellectual Property Chapter provides a timely opportunity to examine its content. Among the myriad issues addressed in the draft is experimental use of patents, a topic that has been the source of much discussion and debate in recent years. This Article analyzes the proposed experimental use clause and evaluates it in light of the policy considerations underlying the patent system. The analysis demonstrates that the adoption of an international standard concerning experimental use of patents can have significant benefits in promoting uniformity and removing uncertainty regarding this important topic. However, a close look at the proposed clause reveals that it falls short of attaining these goals due to a few notable shortcomings. First, the clause is drafted in a permissive manner, and thus, may end up having little impact on the laws of the member parties. Second, it does not provide guidance with respect to key doctrinal questions related to the application of the experimental use exception. Finally, the clause is drafted in a too narrow manner, and fails to include in its scope the important scenario of patented research tools used for the purpose of follow-on research and development. Thus, rather than facilitating the adoption of broad exceptions by the member states in an attempt to create a global legal environment supportive of cumulative research and development, the proposed clause may actually have the opposite effect. The Article concludes with a proposal to revise the clause in order to remedy its deficiencies.

Biography: I acquired my legal education at Hebrew University (Israel) & Columbia University (NYC). I am currently with Ono Academic College (Israel), specializing in IP law.

Email: oferts1970@gmail.com

Tur-Sinai