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International Patent law: An Imbalance of Competing Interests?

Historically, the law has based the philosophical justification of granting intellectual property rights on a utilitarian methodology. This methodology embraces the idea ‘that property rights are necessary as a means to an end – the end being human happiness.’(Becker, 1977) The granting of a patent bestows private property rights in the form of a monopoly for a specified period of time, in return for the disclosure of an invention that benefits society. The pursuit of an appropriate balance between the protection of intellectual property rights and maximum public access has proven to be a difficult objective to achieve. Possibly the most controversial and emotive subject area in patent law is in relation to trying to achieve this balance in the context of pharmaceutical products.

International patent law (through the TRIPS Agreement) endeavours to find a balance between facilitating incentive for future innovation and providing developing nations with access to life-saving pharmaceuticals. However, even with the advent of many new pharmaceutical products in recent times, about one third of the world’s population does not have adequate access to essential medicines for diseases that are preventable or treatable with existing medicines. This presentation will consider the historical rationale behind patent rights to establish whether the exemptions available in the TRIPS Agreement provide the appropriate balance between the competing interests. The creation and evolution of these exemptions will be examined to reach a determination about how effective international patent law has been in promoting ‘human happiness’ for all.

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