CHAPTER 3
3. INTERNATIONAL CONVENTIONS RELATING TO IPR.

A mere observation and a birds eye view of the various international convention in respect of various intellectual property rights that exists during the negotiation and conclusion of the establishment of WORLD TRADE ORGANISATION (WTO) which includes TRIPS explains the necessity and the circumstances under which it came into being and the impact it bring on the entire world trade both in municipal and international law. These conventions are classified into convention administered by WORLD INTELLECTUAL PROPERTY ORGANISATION (WIPO) and convention not administered by WIPO.

In this it is relevant to mention the nature of treaties that are contemplated under UNITED NATION and the effect of it on the member country and the present treaty that gave raise to the establishment of WTO which demand the mandatory obligation of its member the terms of the treaty in full and in Toto.

This study will distinguish and demonstrate that the multilateral treaty that established the WTO is not the regular type of treaty that are concluded till then. It is a treaty of treaties. It encompasses not only the obligation enumerated in it but also enjoin
upon the members to the fulfillment of other treaties to which whether they are party or not.

World intellectual property organisation (WIPO):-

This was established in the year 1970 and became one of the specialized agencies of United Nations in 1974. Its origin however goes back to 1883 when Paris convention for the protection of industrial property and 1886 Berne convention for the protection of industrial property of literary and artistic works respectively were adopted. Both these treaties provided for the establishment of a secretariat have been united in 1893, from which the WIPO evolved.

The activities of WIPO are inter governmental corporation in the field of industrial property and in copyrights and neighboring rights mainly in literary, musical and artistic works in films, records etc. It has concluded varying international convention, treaties & agreements on IPRS.

Part 1 of the TRIPS agreement specifically provides for a mutually supportive relationship between the WTO and this as well as other relevant international organisations. In effect the developed countries provide necessary provision for implementation of both treaties under WIPO and the WTO which provide enough enforcement machinery.
**Conventions administered by WIPO:**

**Paris convention for the protection of industrial property 1967.**

It is an international convention signed originally by 11 countries in Paris on 20\(^{th}\) March 1883. It has been revised six times. It is applicable to industrial property including on inventions, trade marks, service market & industrial designs but also to utility models, trade names, indications of source, appellation of origin and repression of unfair competition.

Art 2 of the TRIPS stipulates that in respect of Parts II,III and IV of TRIPS agreement, Members shall comply with Articles 1 to 12, and Art 19 of the Paris Convention 1967. Therefore the rights and obligation of under TRIPS agreement exist along with existing obligations under international conventions and the agreements is to be read with the relevant paragraph of those convention.

**2. Bern convention for copy right 1971.**

International protection to literary and artistic works is regulated by two conventions. This convention was administered by WIPO.

**3. Madrid Agreement concerning international registration of marks.**

This was signed at Madrid on the 14th April 1891. It was revised 6 times till 1967. This agreement provides for registration of
trademarks including service marks. Registration effected under this agreement is called "International" as every registration has the effect in several member countries.

4. Madrid agreement for the repression of false or deceptive indication of source of goods.

This agreement was signed in Madrid on the 14th April 1891. It was revised 4 times till 1967. This agreement provides that all goods bearing false or deceptive indications of source by which one of the countries to which the agreement applies or a place situated therein is directly or indirectly indicated as being the country or place of origin shall be seized on importation or that such importation shall be prohibited or that other actions and sanctions shall be applied in connection with such importation. It also provides for the case and the manner in which the seizure may be requested & effected.

5. NICE Union:

Nice agreement governing the international classification of goods and service for the registration of marks. It was signed on 15th June 1967 at Nice and brought into force on 8th April 1961. It was revised 3 times till 1979.
6. **Locarno Union:**

Locarno agreement establishing an international classification for industrial designs. This agreement was signed on 8th October 1968.

7. **Hague Agreement concerning the international deposit of industrial designs:**

This agreement was signed on the 6th November 1925 at the Hague & brought into force on the 11th June 1928. It was revised 4 times. The main advantage of the agreement is that by a single international deposit of an industrial design, it can be protected in many member countries, the rely minimizing the cost of protection.

8. **Strasbourg Agreement concerning the international patent classification. (IPC Union)**

It was established on 24th March 1971. It provides for an international patent classification.

9. **Vienna Agreement:**

This agreement was signed on 12th June 1973 & was amended in 1985. The members of the agreement have forward special union & adopted a common classification for the figurative elements of marks. The classification has no effect in respect to the extent of protection afforded to the mark.
10. **Budapest Treaty on the international recognition of the deposit of microorganisms for the purposes of patent production.**

It was brought into force in 1980. To become a member of this treaty, it is essential that the country/applicant should be a member of Paris convention.

The treaty provides that the member countries should recognise for their own patent procedure a deposit of such material in the area of biotechnology in depository institution established for this purpose for the grant of patent.

As on 1st January 1995, 25 institutions have acquired IDA (International depository authorities) states. No government or private organisation in India have acquired the approval. It is important that India being a rich tradition of biological and herbal resources country it should establishes this International depository authorities in many places so that it serve the nation's interest at affordable economy and also will encourage the citizens to use the facilities and save the country's material resources to the maximum advantage.

11. **PCT (Patent co-operation treaty)**

It is a convention, which came into force in 1998. It is an international patent filing treaty that greatly simplifies the filing of patent application around the world. However it does not grant any international patent on the said application.
12. **International Association of Plant Breeders for plant variety protection.**

This international organisation was established in the year 1938. The main objective of the Association is to persuade the different governments to introduce legislations to protect the rights of plant breeders so as to provide them reasonable returns for the investment they have made in breeding their varieties.

13. **U P O V:**

On 2nd December 1961, some European countries signed on international convention for the protection of New Varieties plants in Paris. The purpose of this convention is to stimulate plant breeding to enhance agricultural production by encouraging plant breeders & to provide the plant breeders the legal right thereon. The convention accordingly, established an international union, the membership of which is open only to the members of the Paris convention.

**Conventions not administered by WIPO**

1. **Européen patent convention (EPC)**

   In was drafted in 1963 and brought into force on 7th October 1977. It is administered by one office at Munich, Germany which deals with the examination of the applications, the other office at Hague in Nether land deals with searching for ascertaining the novelty.
Here again the grant of European patent does not result in the existence of single unitary patent covering the whole of the territories of the designated countries in Europe. The grant of the European patent leads to a bundle of national patents each being governed by the same provision of a national patent granted directly by the countries concerned. Such system makes the entire process simpler, cheaper and quicker.

2. **The African Regional Industrial property convention (OAPI)**

This convention is based on the so-called Bangui Agreement, which has 14 African states as members. The members have created a common patent office in Yaounde, Cameroon. On filing an application a certificate is issued. An examination of the application is conducted to establish form, novelty, utility of invention and patentability, but nothing in substance takes place. The patent law countries provision for conducting search to ascertain novelty. If the patent is granted it will cover all the 14th member countries.

3. **The African Regional industrial property organisation (ARIPO)**

This organisation is made up of contracting states of the Harare protocol of 1982. It has also 14 African states as members. This system is less centralized. One has to file the application with the industrial property office of one of the member countries of the Harare protocol. With the minimum requirement fulfilled for a filing date, an acknowledgement of receipt is issued. All the documents are then
forwarded to ARPIO office at Harare, ZIMBABWE. If the application meets all the formal requirements, all the designated countries are informed and the ARPIO office arrange for a sustentative examination and the patent is append. The ARPIO office will inform each designated states. Thereafter the patent will be granted which is valid in all the states not having brought forward.

4. The cartagena Agreement legislation on industrial property.

This agreement has been formulated for Latin American countries & is in force in Bolivia, Columbia, Ecuador, Peru & Venezuela. It is in force since May 1987. The objective of the agreement is to provide common treatment by members' states to foreign capital, trademarks, patents, licensing agreements & royalties.

Article 3.4 and 5 of the TRIPS agreement specifically provides that members are to follow certain obligation provided in Rome convention and Treaty on Intellectual Property in respect of Integrated Circuits (IPIC) or otherwise they must notify the same to the Council for TRIPS.

The above-mentioned number of agreements, treaty etc. clearly shows that number of countries are entering into bilateral & multilateral treaties for the purpose of trade. Therefore the fresh agreement gave raise to the establishment of WTO, a legal institution which incorporates fresh agreements and also contain clause that any member of WTO shall follow the terms of many treaties mentioned
above in the agreement whether he is a member of that treaty or not. This will enlightened the implication and the impact on domestic law and economy as a whole on the coming into force of the TRIPS in WTO. It is for the limited purpose that the various treaties that were in force under WIPO did not demand for the amendment of municipal law for its compliance and the treaty on TRIPS demand immediate compliance on time basis with legal remedy for non compliance treated as violation.