

**DePaul Center for Intellectual Property Law and Information Technology 2007
Symposium**

Patents and Progress: Reflections in the Midst of Change

The Trade Constitution and Patent Law's Quest for Progress

Margaret Chon

Professor, Seattle University School of Law

Director, Center for the Study of Justice in Society, Seattle University

If constitutionalizing the WTO means “an attitude and framework capable of reasonably balancing and weighing different, equally legitimate and democratically defined basic values and policy goals of a polity dedicated to promote liberty and welfare in a broad sense,”¹ then one might ask how the policy goals of intellectual property are weighed in such a global balance. Indeed, how would intellectual property’s own domestic balance – that is the binary policy framework of rights to exclude, on the one hand, and public access, on the other – be relevant in such a global analysis? Does it simply scale up? And does the linkage of global intellectual property regimes such as the WTO TRIPS to other goods such as agricultural goods within a trade framework necessarily raise questions of the social? If social issues other than innovation are implicated, then, how should the global intellectual property regime administered through TRIPS (as well as the various treaties administered under the auspices of WIPO) connect to other possibly ameliorating legal regimes such as the human rights regime, the public health regime, the human development regime or others, in order to “constitutionalize” the WTO? This is a project of understanding social welfare maximization through intellectual property as one of many competing regulatory claims upon a global policy infrastructure that is primitive at best. But it is also one of understanding progress broadly within a human development framework, and not as technological advance *per se*.

¹ James Gathii, Process and Substance in WTO Reform, 56 Rutgers L. Rev. 885, 886 n. 4 (Summer 2004) (quoting Thomas Cottier, Limits to International Trade: The Constitutional Challenge, 94 Am. Soc. Intl’ L. Proc. 220, 221 (2000))