

Ivan Stepanov

Eli Lilly and Beyond

The Role of International Intellectual Property Treaties
in Establishing Legitimate Expectations in Investor-State
Dispute Settlement



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Foreword

This book is the adapted version of the Master thesis written in the summer of 2016 for the completion of the LL. M. program at MIPLC. The thesis is the result of my lasting interest in public international law and intellectual property law. Since its completion in September, 2016, the work has undergone some changes, primarily due to the developments in the case law it touches upon.

In the course of writing the thesis I owe thanks to many people. First of all, I am thankful to MIPLC, its directors, faculty and staff for giving me the best conditions in which I could write the thesis and thrive both academically and personally. Secondly, I thank all of my classmates for their support, love and inspiration. They have not only contributed to my academic successes but have become an important part of my personal life as well. Furthermore, I would like to thank my thesis supervisor Susan L. Karamanian for the guidance, patience and inspiration. Finally, I would like to thank my father, without whom I would not be what I am today.

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Ivan Stepanov

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Abstract

Through the emergence of several high-profile investment arbitration cases, the effects of IPRs as covered investments under IIAs have finally come to light. The latest award, the only arbitration case dealing with patents as IPRs – *Eli Lilly v. Canada*, has brought up a number of interesting questions. Two of Eli Lilly's patents have been revoked and the company tried to redeem them through investment arbitration. One of the claims put forward by Eli Lilly is that its legitimate expectations, a standard of protection found in international investment law, have been frustrated by Canada. By allegedly failing to observe its international IP treaty obligations contained in Chapter 17 of the NAFTA Canada frustrated Eli Lilly's legitimate expectations. In consequence of that, the thesis tries to analyze how the relationship between international IP treaties and legitimate expectations, as a standard of protection, functions. The questions which this thesis will seek to answer are the following: Can Eli Lilly, as a private person, rely on an international IP treaty, an instrument of public international law, aimed at states? To what extent are international sources of IP applicable in investment arbitration and how do they correlate with IIA protection standards like legitimate expectations?

Abbreviations and Acronyms

ADHD	Attention Deficit Hyperactive Disorder
BIT	Bilateral Investment Treaty
DSU	Dispute Settlement Understanding
ECtHR	European Court of Human Rights
FET	Fair and Equitable Treatment
FTC	NAFTA Free Trade Commission
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
HRL	Human Rights Law
ICSID	International Center for Settlement of Investment Disputes
IIA	International Investment Agreements
IP	Intellectual Property
IPR	Intellectual Property Right
OECD	Organization for Economic Co-operation and Development
PCT	Patent Cooperation Treaty
PM	Philip Morris
R&D	Research and Development
SPC	Supplementary Protection Certificate
SPLT	Substantive Patent Law Treaty
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
USA/US	United States of America
VCLT	Vienna Convention on the Law of Treaties
WIPO	World Intellectual Property Organization
TPP	Trans-Pacific Partnership

