

# Intellectual Property Rights in India: Legal analysis, Status and Strategies

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**Received:** 19-04-2020

**Revised:** 09-07-2020

**Accepted:** 29-09-2020

## ABSTRACT

Intellectual property is the creation of human mind and human intellect. This is why this kind of property is called "Intellectual" property. Intellectual property is created by incorporating information in tangible objects capable of multiplying in unlimited number of times at different locations anywhere in the world. The property is basically in the concept, idea, and thought and thereafter is the actual product, work or process, etc. The World Intellectual Property Organization (WIPO) provides further clarification on what exactly should be the nature of Intellectual Property. According to WIPO, the Intellectual Property includes rights relating to inventions in all fields of human endeavors, scientific discoveries and industrial designs. It also contains trademarks, service marks and commercial names and designations, literary, artistic and scientific works and performance of artists, phonograms and alike. Further, the protection against unfair competition and all other rights resulting from intellectual activity in the industrial scientific, literary or artistic fields have been aptly given space in the domain of intellectual property.

**Keywords:** Intellectual Property Rights, World Intellectual Property Organization (WIPO), Patents, Trade Mark

New ideas and inventions that keep on emerging in every conceivable field of science and technology are the outcome of manipulation of human mental faculty. The resulting outcome of human intelligence is known as 'intellectual property'. It is therefore, essential to protect such intellectual property so that nobody else can enjoy the fruits of other's efforts. There are several ways to protect this intellectual property. Patent rights can protect inventions. A new design, similarly, can be safe-kept by properly registering it. New logos and labels as trademark, on the other hand, can also be protected as registered trademarks. A piece of art, literature, cinematographic film, musical record and computer programmes can be registered for their legal protection under copyright law. Biological wealth and

cultural heritage can be protected under geographical indications by properly documenting them.

It is essential not only in the interest of the individual but country and society at large that scientific inventions, new technologies and creative achievements are protected so that the respective innovators, designers and other professionals can gain rewards, which they deserve. There has been a growing realization that with the rapid progress of information technology, evolution of global media and communication revolution, there has been phenomenal increase in copying, counterfeiting and similar other malpractices and owner of intellectual

**How to cite this article:** Kumar, R. (2020). Intellectual Property Rights in India: Legal analysis, Status and Strategies. *Int. J. Soc. Sci.*, 9(03): 141-150.

**Source of Support:** None; **Conflict of Interest:** None



property are several affected by such piracies. Patent copyrights laws differ widely between nations which affect trade are investment flow between nations also give rise to trade and industry disputes. The various national are international efforts in this direction could not do much to alleviate problem. The Uruguay Round of GATT negotiations which concluded December, 1993 after considerable thought and deliberations has attempt to evolve a consensus on Trade Related Intellectual Property Rights (TRIPs) which has been adopted by World Trade Organizations (WTO).

Indian scenario in this regard, at this moment, is characterized by patent illiteracy, a patent system that thrives in archaic conditions characterized by differing voices. Controversy creeps ever' time in the news of a typically Indian entity like turmeric or basmati on being patented abroad. But a sustained movement to comprehend and prepare suitably to take on the challenges of the international pressures seems to be missing.

India's decision to join the Paris Convention may finally lend the much-needed direction to the rather haphazard approach the country has taken towards preparing itself for the patent regime. It will most importantly help in considerably reducing the cost of patenting of products by allowing Indian entrepreneurs to avail of the uniform priority date so that patent becomes applicable from the date of filing in all the 179 countries who are signatories to the Patent Cooperation Treaty saving the trouble and costs of filing separate applications in each individual country<sup>1</sup>.

### History of Intellectual Property Rights

A peep into the historical lane reveals that the maiden attempt was made to reshape the world economy as early as after the Great Depression and Second World War and "The Bretton Woods Conference" was held in July 1944 at New Hampshire. The conference decided to establish three international institutions namely: (1) The International Bank for Reconstruction and Development (IBRD), (2) The International Monetary Fund (IMF) and

(3) The International Trade Organization (ITO). The first two institutions came into existence on December 27, 1945, but the International Trade Organization could not be established due to interest clash.

Consequent upon the 'Bretton Woods Conference', 23 countries attended another conference held in Havana during 1947. This conference drew up a blueprint called "Havana Charter", and the Constitution of and International Trade Organization was prepared. However, some countries including U.S.A. refused to sign this Charter. It was, therefore, decided to keep the proposal in abeyance. In its place a temporary and contractual body, named "General Agreement on Tariffs and Trade" (GATT) was established by the participating countries.

The Uruguay round was the eighth round of GATT and was the longest round in the international trade history and took eight years to conclude. This round was multidimensional and ambitious as it covered the agreement on Agriculture, Textiles, Trade Related Intellectual Property Rights (TRIPS), Trade Related Investment Measures (TRIMS), and Trade in Service etc. One of the biggest achievements of the Uruguay round of trade negotiations was the up gradation of the GATT to the present form of the World Trade Organization. The new organization WTO which replaced the GATT on 1<sup>st</sup> July 1995 would be the body to implement the agreements negotiated under the Uruguay round as well as take up several issues which remained unsolved<sup>2</sup>.

The failure to arrive at a consensus at the historical Uruguay round of trade negotiations during 1986 resulted into a comprehensive blueprint for congenial world trade, popularly known as "Dunkel Draft". The Intellectual Property Rights (IPRs) remained the most debated issue under the TRIPs for conspicuous reasons. TRIPs are nothings but the Intellectual Property Rights related to Trade. The Agreement on Trade Related Aspects of Intellectual Property Rights is set out in final Uruguay round text. The text is split up into seven different parts containing a total of seventy-three articles. Part I is on

<sup>1</sup>Horzovvitz, Andrew W and Lai, Edwin L C Patent Length and the rate of Innovation, *International Economic Review*, 37(4): 785-801.

<sup>2</sup>Cullet, Philippe, Patent bill, Trips and right to health, *F.P.W* 36(43) 2001 (27 Oct-2 Nov.) pp 4049-57.

general provisions and basic principles. The standards for specific intellectual property rights. Copyrights, copyright and related rights, trade marks, geographical indications, industrial designs, patents, layout designs of integrated circuits and protection of undisclosed information have been contained in Part II. There is also a section on the control of anti-competitive practices in contractual licenses. Part III is on the enforcement of intellectual property rights. While, Part IV talks about the acquisition and maintenance of intellectual property rights, Part V is on dispute, prevention and settlement. Part VI covers the transitional arrangement and lastly Part VII deals with institutional arrangements.

### Types of Intellectual Property Rights

The TRIPs provide the standards and norms on the forms of IPRs as:

- (i) Patents
- (ii) Copyrights and related rights
- (iii) Geographical indications
- (iv) Industrial designs
- (v) Trademarks;
- (vi) Layout designs of integrated circuits;
- (vii) Trade secrets (undisclosed information)

### Advantages of IPRS in the New Trade Regime

India contains valuable natural resources and scientific manpower in which IPRs would bring favorable changes to the Indian economy. IPRs indicate massive evidence and reiterate the critical role for productive research and invention. It will also help in increasing percentage of Indian exposure in world trade. Moreover, when patent laws are variant between the trading nations, these give rise to trade and industrial disputes, besides untoward effect on the investment flow. Hence IPR would protect the IP owners for plagiarism, counterfeiting and other malpractices in time of growing information technology, evolution of global media and communication revolution. The interests of farmers and researchers would be protected through evolving an effective, *generis* system. This system is a diluted form of patent which provides a favorable framework of plant breeders rights, through

which protection is accorded to their researchers and farmers with regard to the use and exchange of seeds and plant genetic material. And lastly, the long period IPRs i.e., patent would also encourage inventions and productive research and India could benefit from such developments.

### Disadvantages of IPRS in the New Trade Regime

It would promote bio-colonization and legalize monopolies in the form of multinational companies (MNCs). There is a chance that many of Indian traditional medicinal plants may get seriously endangered through bio-piracy and over exploitation. The interests of researchers and farmers would be worst hit owing to patenting of seeds of other biological materials. On the other hand accepting product patents in pharmaceutical sector would jerk up the prices of drugs. Extending patents protection period to twenty years would limit access to new technology and production of new product in India and this might promote monopoly practices by the patent holders. Moreover the fear is that MNCs can misuse it to curb competition through wrangling. There is a chance that a strong patent system would impair attempts at development of technology, locally, and more importantly, new patent act is synchronized with 'TRIPs would virtually render the transition period of ten years ineffective.

### Dimensions of Intellectual Property Rights

#### Patents

Patents are the protection accorded by a government to an inventor for a fixed number of years during which period he will hold full rights to exclude others from exploiting. In return for this right, the inventor discloses details of his innovation to the people. In most countries, patent protection is being given for twenty years from the date of filing. Three basic criteria to be fulfilled for obtaining a patent are novelty, non-obviousness and utility.

According to WTO, 1995, a patent is a statutory privilege granted by the government to the inventors and other persons from manufacturing, using or selling a patented product or from utilizing a patented process or method.

Patentable inventions in accordance with the definition of the term, 'invention' has been defined in section 2 (j) of patents Act, 1970, which means any new and useful (i) art, process method or manner of manufacture; (ii) machines, apparatus, or other article; and (iii) substance produced by manufacture.

Therefore, in order to be patentable, an invention must possess the characteristics viz., (i) It should relate a manner of manufacture; (ii) The manner of manufacture should be novel; (iii) It should be outcome of inventive activity (iv) It should have utility and (v) It should not be contrary to law and morality.

### ***Industrial Design***

An industrial design is an outcome of inventive activity, initially, mentally conceived and then put on a drawing board, followed by the mechanics of giving a concrete shape to the basic new idea in the design and then finally contriving a method for mass manufacturing the same to put forth a product in the market for the benefit of the consumer. A new design thus conceived or invented is, therefore, an intellectual property.

"Design", as defined in the 'Designs Act, 1911, related only to the features of shape, configurations, pattern or ornamental decoration applied to an article by any industrial process or means. Whether manual, mechanical or even chemical, separate or combined, which in the finished article appeal to and are judged solely by they eye<sup>3</sup>.

### ***Trade Mark***

Trade mark have been defined as any signs, or any combination of signs capable of distinguishing the goods or services of one undertaking from those of other undertakings. Such distinguishing marks constitute protectable subject matter under the provisions of the agreement. The agreement provides that initial registration shall be for a term of not less than seven years and the registration shall be renewable indefinitely. Compulsory licensing of trademarks is not permitted.

The Indian Trademark Act is in the process of being

<sup>3</sup>Kim, Tae-Wan Patent Ladder in an Endogenous Growth Model, *Seoul Journal of Economics*, 13(1) 2000 Spring: pp 69-92.

amended in response to our own requirements. The proposed amendments, if approved, would also bring our trademark law completely in line with our obligation in the TRIPs Agreement. It may be pointed out that by and large the amendments being made in the context of the TRIPs agreement are marginal; the main amendments are in the nature of clarifications and procedural specifications.

### ***Copyright***

Copyright means all the rights conferred by the Act upon its owner in respect of his literary, dramatic, musical or artistic work or in respect of cinematographic film or record. It does not only mean the right to do something but also the right to exclude others from committing those acts, which are protected under the copyright act. In short, 'copyright' in a work means the exclusive right to do the things specified in it. Thus, copyright secures from of expression and not the ideas or information or opinions. The subject matter of one's imagination or thinking cannot be protected as such. Apart from its form of existence copyright offers protection to original works of authorship in any tangible medium of expression.

### ***Layout Designs of Integrated Circuits***

The obligation in this area is to comply with the Washington Treaty on layout designs. India is a signatory to the Washington treaty. The main obligations of this treaty which are also incorporated in TRIPs Agreement are the protection of the intellectual property in respect of layout and designs that are original in the sense of feeling the result of their creator's own intellectual efforts and national treatment of foreign right holders. The term of protection is ten years and the rules in respect of compulsory licensing are the same as in case of patents. India would need to enact legislation to give protection to layout design.

### ***Trade Secrets***

Trade secrets are defined as "a formula, pattern, device or compilation of information used in one's business and given an opportunity and advantage over competitors who do not know the use of it."

The agreement requires the members to protect the undisclosed information and data submitted to governments or governmental agencies. It also provides that natural and legal persons shall have the possibility of preventing information lawfully within their consent in a manner contrary to honest commercial practices. Further, parties are required to protect against unfair commercial use Undisclosed or other data obtained as a condition of approving the marketing of pharmaceutical or of agricultural chemical products. In India there is no separate legislation dealing with trade secrets.

### **Geographical Indications**

Typical examples of GI are basmati (India & Pakistan), scotch whisky (Scotland) and Champagne (France). These are the products identified as typical to a geographical region. This gives the right to producers only from these regions to name the produce by these names. Produce from any other region cannot be named similarly.

The agreement contains a general obligation that parties shall provide the legal means for the interested parties to prevent the use of pay means in the designation or presentation of good that indicated or suggests that the good in question originates in a geographical origin of the good. There is no obligation under the agreement to protect geographical indications which are not protected in their country of origin or which have fallen into disuse in the country.

India does not have any specific law on geographical indications. Case law however, enables legal action for protection of geographical indications. It would, therefore, need to enact a new law on the subject; otherwise there is every danger of items like basmati rice getting patented by other countries. We should get geographical goods patented like basmati rice, Bikaneri Bhujia and Indian sweets like Shrikhand, Sandesh, Jalebi etc. covered under these provisions.

### **Traditional Rights and National Sovereignty vis-à-vis Patents**

Several cases of patents like those pertaining to turmeric, neem etc., tantamount to almost a direct violation

of the principles of national sovereignty, traditional knowledge and rights, several of which constitute the “prior art”. The patent given to W.R. Grace Company to use a pesticide extract from the ‘neem’ tree was challenged in Washington in 1995 by more than two hundred organizations from thirty-five countries. They argue that the company has wrongfully usurped the age-old biological process used by millions of farmers in India and other countries for generations.

The US Patent Office revoked the turmeric patent on the bases of a challenge filed by the Council of Scientific and Industrial Research (CSIR) of India. The patent had been granted in March 1995 to two nonresident Indians associated with the University of Mississippi Medical Centre, Jackson, and USA. As turmeric has been used for thousands of years for healing wounds and rashes, CSIR challenged the patent on the ground that it lacked novelty. The US Patent Office upheld the objection and cancelled the patent.

Other countries have patented several other Indian plant genetic resources in the past. As many as twenty-two medicinal plants have already been patented by a number of American and Japanese firms.

An herbal drug “Picroliv” was developed by Central Drug Research Institute (CDRI), Lucknow, from the roots of *Picrorhiza kurroa*, a perennial herb found only in the higher reaches of the northwestern Himalayas. CSIR applied and got a patent in 1993 but a US company is already producing and marketing it. Another patent on pipeline was taken by a US company depriving the country of origin of the benefit of export of the commodity.

### **Patents and Farmers’ Rights**

The most effective mechanism for preventing biopiracy and protecting farmers is by creating a legal framework for ‘farmers’ rights. Farmers’ rights recognize the collective, cumulative innovation of farmers embodied in distinctive varieties like basmati. The basmati patent denies farmers’ rights, and instead of recognizing that, the Rice Tec patent is through the recognition and legal protection of farmers’ right. Since these rights exist in reality and are not given by national governments or

international agencies, the absence of a farmers' rights legislation in India does not imply that the Rice Tec patent cannot be challenged in the U.S. on the basis of prior innovation and breeding by Indian farmers.

Geographical indications are a form of Intellectual Property Rights, which would allow 'basmati' only to be used for rice originating in India and Pakistan. A false claim to a patent treats the aromatic characteristics of basmati as an innovation by Rice Tec rather than the result of nature's gift combined with the farmers' collective innovation and breeding over centuries. Hence, the prevention of biopiracy requires a combination of geographical indications for preventing unfair marketing and strong farmers' rights legislation which prevents unfair claims to breeders' rights or patent claims. Farmers' rights are the declaration of national wealth and traditional innovation. Without the farmers' rights the country's biological wealth and intellectual heritage will continue to be pirated and, exploited.

### **Current Status of Intellectual Property Rights System in India**

In a recent study conducted by an NGO, it was revealed that foreign patents were granted more frequently because of India's poor patent literacy and lack of appropriate patent laws. Today United States alone holds forty patents on products developed from the neem and about fifty from other countries, while Indians hold just three. It is the case of tamarind. While the US holds thirty patents, India has only eight. Similarly, US holds many patents on the plants extensively grown in India, such as "pomegranate" "mustard" and "soapnut" (as fly retardant); "bitter-gourd" (treatment of tumors and HIV infection), "amla" (for antiviral activity and hepatitis), "pepper" (Piperin for nutritional use), while India holds too few patents on them. India is taking this whole matter rather casually, for which it may have to pay a very high price in future.

As far as physical infrastructure is concerned, the national offices, including the one in New Delhi, are in a decrepit state in both information and infrastructure. It takes a minimum of six years for the complete processing of a patent. There is anything between twenty to twenty five

thousand pending applications. With just under forty patent officers; it is possible to clear a maximum of three thousand applications annually. In such a scenario, one wonders if India will be able to overcome this backlog. Feeble more are afoot to train more patent officer clear the backlog. Intellectual infrastructure is also growing at a sharp pace. The government is planning form a joint group consisting ministries of science and technology industry and human resources development to boost this vital infrastructure.

In the meantime, organizations as institutions facing the brunt of the TRIPs regime have launched their own effort at creating and strengthening IPR a as building databases. Notable among are the CSIR, Department of Science and Technology (DST), National Research Development corporation (NRDC), Technology Information Forecasting Assessment Council (TIFAC), Department of Electronic (DOE), National Informatics Centre (NIC), Indian Council of Agriculture Research (ICAR), etc. The technology promoting NRDC has even introduces an incentive scheme for industries finance unto 50 per cent and help in film applications aboard.

### **Strategy for Developing Efficient IPRS Regime**

#### ***Documentation of Bio-wealth and heritage***

If India catalogues information in scientific way about its all bio-wealth and biodiversity, many of our patent disputes either would not occur or can be solved with least problem. However all these documentation work must not be like a government work, but should yield some concrete document at the earliest which can be consulted by the patent office anywhere in the world while granting patents or settling patent disputes.

#### ***Amendment in Patent Law***

Clearly, an amendment of the Indian obligations. There are two possibilities. Either provides for a mailbox arrangement and exclusive marketing rights now and legislate again for product patent later by January 1, 2005. Alternatively, provide for product patents and other provisions in a single amendment. In author's view the latter option is preferable. This is because in actual effect accepting EMRs is more than providing

product patents where at least the patent office is able to examine the invention for possible patent ability. By granting a product patent, a country is at least creating a possibility for local production, whereas in the case of EMR, an import monopoly is being sanctioned for an invention which has not even been examined as worthy of patent grant under country's law. Hence, a number of developing countries like China, Argentina and Brazil have chosen to take the product patent route in place of EMR's route.

### ***Need of a Geographical Indication Bill***

Geographical indication law provides the legal means for the interested party to prevent use of 'native names/nay mean' in designation or presentation of a 'Good' Geographical Indication law can safeguard its native products like basmati, bikaneri bhujia, shrikhand, paneer and a host of product.

### ***Improvement in the Working Efficiency of Patent Office***

Still another part of strategic action with regard to patents is to set right the slow-moving patent office. In India it takes about 6-7 years to get the patent claim cleared or granted against hardly two years in USA. To speed up the process and improving the staffing it is only recently that Indian government has made a budgetary allocation of ₹ 22 crore for strengthening the infrastructure of trademark registry and raising the funding for patent offices. Establishment of a National Patent Office is also under above budgetary allocation for enabling easy patent registration.

### ***Patent Literacy***

Patent awareness is relatively at a lower level in India as compared to the developed nations. Entrepreneurs, scientists, technologists and related persons must be given good media exposure, periodic seminars and symposia. Patents are published in Indian Gazettes. Very few have access to them and many are ignorant of such patents. Still another aspect of patent literacy pertains to the fact that many do not know prerequisites for patent. They are aware of the fact that inventor should file a patent application before publishing his/her invention or using that invention publicly. A patent can be denied

even for a useful and commercially attractive invention in case the above precautions are not taken.

### **Patents and Law in India**

Patent legislation has a long history in India. Beginning in 1856, the Indian patent law has been revised a number of times. The latest, the Indian Patent Act of 1970, recognizes patent rights for a period of seven to fourteen years. Article 5 of the Indian Patent Act provides that in case of inventions (a) claiming substances intended for use or capable or being used as food or medicine or drug, (b) relating to substances prepared or produced by chemical processes (including alloys, optical glass, semiconductors and inter-metallic compounds) no patent shall be granted in respect of claims for the substances themselves, but claims for the methods or processes of manufacture shall be patentable. Even in areas where patent is permitted, the government is empowered to reject patent application in national interest. Further, to prevent acquiring patent rights solely with the objective of keeping the rivals out, the government retains power to reject patent and/or to make patented products compulsorily available to users.

One major change, introduced by the TRIPs agreement has been in relation to product and process patents. In Indian patent legislation a distinction is made between 'product' patent and 'process' patent. The Indian Patent Law of 1970 allowed process patent but not product patent, for food, medicine, agro-chemicals, etc. 'Process' means, say for a medicine, the combination of various ingredients - chemicals, medicinal plants, herbs and other biological products and so on - in specified proportions, and by using a technique or a way of combining those, that makes the production of such medicine possible. It was, therefore, possible for an Indian pharmaceutical company to buy a 'process' of making a particular medicine, in exchange of royalty paid to the patent-holder in a foreign country, but then to produce the medicine by using cheap, local material. This way lifesaving drugs can be sold in India at a price that is one-twentieth of their price in the developed countries.

Now under Article 28 of the TRIPs agreement this distinction between 'process' and 'product' patent has been abolished. It is the product that is patented, while the process directly used for making that product is also implicitly patented at the same time. After 2005 AD, when the deadline of TRIPs expires and the Indian law is amended accordingly, the 'product' cannot be made locally with cheap materials, and will have to be purchased from the foreign companies at exorbitant prices. As Economic Commission for Latin America and Caribbean commented: "The rules on intellectual property are a particular cause of concern, since they may raise the prices of medicines and other patented products in the short run, but may also limit access to new technologies in the longer term". As another expert commented: "As for the impact of life patents on the welfare of third world farmers, it is evident that patented agricultural technologies (seeds, biocides, etc) will increase production costs".

Another controversial provision of TRIPs (in Article 34) is to reverse the burden of proof: it is for the defendant to prove that a process other than the patented one has produced an identical product. This violates one of the cardinal principles of Anglo-Saxon jurisprudence, that a person is presumed innocent until found guilty. Thirdly, under the Indian patent law the maximum period for which patent right can be exercised is fourteen years. Now TRIPs has made it uniform and universal at twenty years. This change has come at a time when there are weighty arguments for doing just the opposite of revising the period of patent rights downwards. These days, technologies change much faster in a matter of three or four years. To give an example, while radio and gramophone lasted for decades, the black and white TV, colored TV, cable TV, VCR, multimedia, have come in quick succession, after every four or five years. In this situation, by the time the patent period of twenty years expires, there would be no takers for the obsolete technologies. Even computers do not last beyond four-five years, while software packages are revised every two years or so. To revise patent period upward to twenty years now implies that the MNCs would continue to control technological advance forever. These MNCs have sufficient money power and brainpower to

invest in research and development and to perpetually maintain their lead over the less developed countries, so that long before one period of patent would be over another- better and more attractively packaged - product would be launched catering to similar needs.

Fourthly, whereas life forms are not patent able under the 1970 law, after it is amended in line with the TRIPs agreement, by 2005 AD, it would have to provide patent protection for the plant and animal varieties or to take recourse to a sui generis system that would serve more or less the same objective (Schott 1994: 118-19). Sui generis mean something unique or distinct, but serves the same purpose. Among the rich countries nearly all, including the US 'product' cannot be made locally with cheap materials, and will have to be purchased from the foreign companies at exorbitant prices. As Economic Commission for Latin America and Caribbean commented: "The rules on intellectual property are a particular cause of concern, since they may raise the prices of medicines and other patented products in the short run, but may also limit access to new technologies in the longer term". As another expert commented: "As for the impact of life patents on the welfare of third world farmers, it is evident that patented agricultural technologies (seeds, biocides, etc) will increase production costs".

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years expires, there would be no takers for the obsolete technologies. Even computers do not last beyond four-five years, while software packages are revised every two years or so. To revise patent period upward to twenty years now implies that the MNCs would continue to control technological advance forever. These MNCs have sufficient money power and brainpower to invest in research and development and to perpetually maintain their lead over the less developed countries, so that long before one period of patent would be over another- better and more attractively packaged - product would be launched catering to similar needs.

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### Transitional Rules

While the amendment of patent legislation for pharmaceutical and agricultural chemical products can wait until 2005 AD, certain transitional changes were required to be made by the signatories to the Marakesh agreement before they joined the new international trade organization - World Trade Organization (WTO) that had replaced GATT from January 1995. Under transition rules they were asked to set out application procedures as if such protection were already available. After the transition period had expired, those countries were expected, under Article 70.8 of the TRIPs agreement, to grant applications that were filed during the transition period patent protection for the remainder of the patent

term, counted from the filing date. In addition, under Article 70.9, such countries were required to grant exclusive marketing rights until a decision was made on the patent application, if a patent application was made and granted in another country.

These transitional rules, which have the effect of virtually negating the five-eleven years time periods allowed to those countries, generally came to be known as exclusive marketing rights (EMR) and mailbox. Under EMR, it would no longer be necessary for a patent holder to apply separately to each country for patent rights. Once a product is patented in any one country, it becomes automatically and universally applicable to all the member countries of WTO, even without any examination of the validity of their claims - in terms of their novelty, non-obviousness and having practical use - by the country concerned. Nor would the country be permitted to impose conditions that safeguard the interests of the domestic industry e.g. by way of compulsory licensing rights. Every country is bound to give exclusive marketing rights to that patent-holder, who has obtained patent anywhere in the world, as long as that country is a member of WTO. In other words, patent-holder is going to have a lethal combination of two types of monopoly rights arising from patents and EMR.

Given that the overwhelming majority of patents are owned by the rich countries, the benefit would accrue overwhelmingly to the multinational companies of rich country origin, and indigenous products would be driven out of the markets of the poor countries like India, e.g., Indian basmati<sup>5</sup>.

The mailbox provision - meaning an arrangement for receiving patent applications, mainly from the multinational countries - assumes that our patent law would be amended by the year 2005 AD, and under this the government will begin receiving patent applications in order to determine the position of a company in the queue. This is an extraordinary piece of legislation that is based on the probability of the passing of another legislation in some future date.

<sup>4</sup>Van Dijk, Theon, Patent height and competition and product improvements, *Journals of Industrial Economics* 44 (2), June 96 pp 151-67.

<sup>5</sup>Dasgupta Biplab, Patent Lies and Latent Danger, A study of the Political Economy of Patent in India, *EPW*, 1999 (April 17-30) pp 979-93.

## CONCLUSION

The patent related fights necessitate that India needs to protect its necessitate and traditional knowledge system urgently. India must document its bio-wealth and traditional knowledge and allow changes in existing patent laws particularly on product patents. The expert committee on patents must understand the TRIPs related issues in the true national perspective and suitably act as 'think tank' on its exclusive 'defensive strategy' to fight patent problems. India should also approach the dispute settlement body of WTO to teat patent violations and spurious patenting using pirated genetic material as punishable crimes.

The government of India has taken the first bold step towards plugging the country's scientific research and technology base into the global regime. Known to be oldest global arrangement for the protection of industrial property, the Paris Convention provides an entry point for India to play a more dynamic and interactive role in dealing with these questions on international for a. The Intellectual Property Rights (IPRs) regime has moved so far ahead that India cannot afford to be left behind. In the short term, this move will encourage improved industrial information flows and protection for Indian inventors abroad. To start with, if an Indian inventor has registered with the national patent regime, he or she will automatically join the club of countries, which have signed this treaty.

Administered by the World Intellectual Property Organization (WIPO), the Paris Convention can only be the first step for Indian scientists and researchers. India will now be in a position to chalk out patent data on industrial innovations worldwide before clearing domestic requests for product or process patents. It is imperative that India joins the Paris Convention without any further delay. The fear that foreign companies will flood the Indian Patent system with a large number of applications is not fully justified, as even under the present system there is nothing to prevent such an onslaught. Judged on the immense benefits that will accrue from joining the Paris Convention and the PCT to inventors, the applicants, and to the country's intellectual property protection scenario, thee appear less logic in delaying India's entry.

It has to be clearly understood that its entry into

the international fraternity of members of the Paris Convention has nothing to do with the country's concern of the harmonization of the patent system as required under the obligation to the WTO.

The amendment, if at all, required to be made for joining the Paris Convention, are marginal and will not affect India' national sovereignty in the matter of maintaining a fair and equitable reward system for the protection of intellectual property generated by Indian scientists.

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