

Patent and Politics

The Indian Scenario

The latest Global competitive rankings by Geneva-based World Economic Forum has made the policy makers proud and reaffirmed the potential of the Indian economy. While the key scoring factors inter alia, have been the other factors of innovation, covering various aspects like Intellectual Property Rights and research and development capabilities. Very few have insights on the moulding process, which has resulted in listing India as 26th ranked in the decisive factor of Innovation way ahead of China on 46th rank.

The policy-makers during introduction of The Patents Act, 1970, had prime focus on improving the depleting health care and poor economical condition of people at large. They hence, took away the already existing product patent regime of the Patent and Design Act, 1911. In particular, Indian Patent Acts, 1970 prohibited product patents for any invention intended for use or capable of being used as a food, medi-

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cine, or drug or relating to substances prepared or produced by chemical processes. This enabled the Indian companies to produce knock-off versions of the drugs patented in other countries by using a patented process. Years of the process patent regime helped the Indian Pharmaceutical industry flourish.

When WTO commenced discussing the TRIPS related issues India being the founder member of organization agreed to provide the product patent. The policy makers also agreed that India would provide world-class patent legislation to give direction to Indian and Indian industry to create new products.

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The Ordinance of December, 2004, was passed to comply with the TRIPS deadline of 1st January, 2005. The Presidential decree was necessary since a bill to amend the law was not introduced in the winter session of parliament because of political differences. The most important features of the Ordinance among others were product patent regime that was to affect the pharmaceutical industry, and laws relating to software patentability, which were to greatly encourage innovations in the booming Indian software industry.

Subsequently, amendment to the Patent laws were passed by both the Houses of the Parliament on 24th March 2005, maintaining the clauses relating to product patentability. However, the laws relating to software were relaxed under the influence of the communists, making the inventions in embedded-software non-patentable. This was seen as a major victory for free software foundation, which had been lobbying hard against the bill.

These recent changes have brought about the dual changes to Indian industry. The transition from process patent regime in pharmaceutical-sector to the product patent regime has sown the seeds of research and development in the Indian Pharma-sector, which is seen from the increased number of

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patents filings by Indian pharmaceutical companies. While the developed manufacturing capabilities ensured their stability.

It is required that the Parliament comes to a mutual conscience in the laws relating to the software patents following on the lines of the major software producers like the United States, Japan, Switzerland, Australia, to further define and encourage innovation in the software industry.

Political Directions to the Patent Laws

During ancient times of existence of Princely States, the head of the State or the king used to reward the person who disclosed their intellectual creation. The motive behind rewarding such individuals was to obtain the disclosure of the creation. This ensured that the knowledge is transferred from one generation to the other and did not die with the creator. The basic rule of Intellectual Property Rights seems to have not changed over the years.

During British times in India the Patents and Designs Act, 1911, was introduced on the lines of the British laws. The same act continued to exist until the Indira Gandhi Government realized the importance of reforming the Patent laws. After which the 1970 Patents Act was introduced.

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