

The Impact of Patents in Present Scenario an Overview of International Law

Dr. Amit Gopinathan

Abstract

A patent is a form of industrial or intellectual property and patent is a right granted to a person who has invented a new and useful article or an improvement of an existing article or a new process of making an article. Patent consists of an exclusive right to manufacture the new article invented or manufacture an article according to the invented process for a limited period and after the expiry of the duration of patent, anybody can make use of the invention. The owner of the patent can sell his patent property and can also grant licenses to others to exploit the patent.

The property in a patent is similar in many respects to other forms of property and patent being a creation of statute is territorial in extent and patent granted in one state cannot be enforced in another state unless the invention concerned is also patented in that state.

The concept of patent and its essential ingredients like novelty, inventive step, lack of obviousness and sufficiency of description have remained the same ever since it was conceived over four hundred years ago. Patent is not granted for an idea or principle as such, but for some article or the process of making some article applying the idea. A patent is to encourage and develop new technology and industry. An inventor has exclusive right to keep it secretly and may disclose the new invention only if he is rewarded. The patent is granted for a statutory period and after the expiry of monopoly period others can use the invention or improve upon it. A patent when granted confers on the patentee the exclusive right to use the invention during the term of the patent or as long as it is in force on payment of the renewal fee from time to time. Patents have assumed an international character.

The international convention for the protection of industrial property (Paris Convention)

The TRIPS Agreement of WTO provided patent rights for industrial property in all the countries of the union for the protection of industrial property.

In India, the rights conferred on a patentee are purely statutory rights conferred by the Patents Act 1970.

International Law of Patents

1. The TRIPS Agreement of WTO and Patents Section 5 of part-II of TRIPS Agreement relates to the patents.

Patentable and Non-Patentable subject matter

Patents shall be available for any inventions whether products or processes in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.

Patents shall be available and patent rights enjoyable without discrimination as to the place of invention the field of technology and whether products are imported or locally produced.

Members may exclude from patentability inventions the prevention within their territory of the commercial exploitation of which is necessary to protect order public or morality including to protect

Human

Animal

Or plant life

Or health

Or to avoid serious prejudice to the environment provided that such exclusion is not made merely because the exploitation is prohibited by their law.

Member may also exclude from patentability

Diagnostic, therapeutic and surgical methods for the treatment of humans and animals.

Plants and animals other than micro-organisms and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes and members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof.

Rights conferred on the Owner of Patents

1. A patent shall confer on its owner the following exclusive rights
 - a) Where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making using offering for sale, selling, or importing for these purposes that product;
 - b) Where the subject matter of a patent is a process to prevent third parties not having the owner's consent from the act of using the process and from the acts of using, offering for sale, selling or importing for these purposes at least the product obtained directly by that process.
 - c) Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts (Art. 28)

Caselaw

The US raised a dispute against India (DS No.50) relating the patent protection for pharmaceutical and Agricultural Chemical Products. The panel found that India has not complied with its obligations under Article 70.8(a) or Article 63(1) and (2) of the TRIPS agreement by failing to establish a mechanism that adequately preserves novelty and priority in respect of application for product patent for pharmaceutical and agricultural chemical inventions, and was also not in compliance with Article 70.9 of the TRIPS Agreement by failing to establish a system for the grant of exclusive marketing rights.

The report of the panel was circulated on 5th September 1997. On 15th 1997, India notified its intention to appeal certain issues of law and legal interpretations developed by the panel.

The Appellate body upheld, with modifications, the panel's terms of reference.

The DSB adopted the Appellate body report and the panel report on 16th January 1998. At the DSB meeting of 22nd April 1998, the parties announced that they had agreed on an implementation period of 15 months. The period of implementation expired on 16th April 1999. At the DSB meeting on 28 April 1999, India presented its final status report on implementation of this matter which disclosed the enactment of the

relevant legislation to implement the recommendations and rulings of the DSB.

The EC also raised similar dispute against India (DS No. 79) relating patent protection for pharmaceutical and Agricultural Chemical Products. The panel recommends that the Dispute Settlement Body should request India to bring its transitional regime for patent protection of pharmaceutical and agricultural chemical products into conformity with its obligations under the TRIPS Agreement.

The panel further suggests that, in establishing a mechanism that preserves novelty and priority in respect of applications for product patents in respect of pharmaceutical and agricultural chemical inventions during the transitional period, India should take into account the interests of those persons who would have filed patent applications had an appropriate mechanism been maintained since the expiry of the patents Ordinance 1994 as well as those who have already filed such applications under the ordinance or the administrative practices currently in place.

Indian Parliament passed an amended patent Bill on the 10th March 1999 to meet the requirements of the DSB.

II PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY, 1967 AND PATENTS

Articles of Paris Convention for the protection of Industrial Property are related to the patents.

Scope of Industrial Property:-- The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of Unfair Competition (Art. 1(2)).

Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper but likewise to agricultural and extractive industries and to all manufactured or natural products, for example

Wines

Grain

Tobacco leaf

Fruit

Cattle

Minerals

Mineral waters

Beer

Flowers

And Flour Art. 1(3)

Patents shall include the various kinds of industrial patents recognized by the laws of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition etc. Art. 1(4).

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