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Pharma Patents and Medicine Equity in India

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A B S T R A C T

Pharmacy is a very important sector in Indian Economy and with the bulging population which the country has, its viability attains seemingly greater heights each time. The recent coronavirus pandemic has questioned the entire pharmaceutical regime of the world and disparities between the countries have become even more apparent in dealing with medical emergencies. The role of IPR in this sector stems from the need to on rights to inventing a particular medicine, regulate its sale and reach cross borders with the business arising out of it. Medicines are the lifesaving boons for the human civilisation – ever since days of ancient civilisations, medicines have been prepared to combat mortality and increase lifespan and the quality of life as well. These drugs need to be analysed in terms of relating them with their inventors by way of patents. Considerations of individual interests juxtapose societal and public interests at large, wherein our research proposition finds its place.

Keywords: Pharmacy, Patent, Medicines, Equity, Society, Interests

Introduction

India's pharmaceutical industry is one of the largest industries in the world and is now ranked third in terms of quantity. Since the beginning of the 1970s, it has matured tremendously over time. Today, the industry is diversifying into a myriad of areas, including research and development (R & D), API manufacturing, branding, generics, branded generic manufacturing, and clinical research. The existing framework of internationally recognized intellectual property law is specified by the WTO Regulatory Agreement (TRIPS) on Trade-related Intellectual Property Rights. They are patents, copyrights, trademarks, geographical indications, protection of sensitive information, integrated circuit layout design, industrial design. Another area of protection that India is interested in is the protection of traditional knowledge as intellectual property. Several strengths and weaknesses were considered in the agreement on the trade-related aspects of intellectual property rights. The Marrakech Agreement of April 15, 1994, which establishes the World Trade Organization (WTO Agreement), states that "patents are new, inventive step and industrially applicable in all technical fields. Possible". Medicines are the life saving boons for the human civilisation – ever since days of ancient civilisations, medicines have been prepared to combat mortality and increase lifespan and the quality of life as well. The quality and technology has been steadily increasing around medicines and the birth of the branch of study – pharmacy and pharmacology has diversified further fields of inventions in this field.

A patent is the exclusive right granted by the government to an inventor, or anyone who claims to be the true first inventor (or discoverer of a new process) to create, use, or develop an invention for sale. Or a set of specific rights. Usually for a certain period of time.

A patent for an invention is a grant of property rights to the inventor issued by the Patent and Trademark Office (PTO). Patents are used to protect new products, processes, devices, and applications. However, it is not clear in view of the fact that the invention was made before, and only if it is not in the public domain and is not disclosed anywhere in the world at that time. Patent application.

The present invention must have a practical purpose. Patents can be registered nationwide. By registration, the patentee shall create, use, sell, or grant the invention for 20 years from the date the patent application was filed, or, in special cases, from the date of import of the previous related application.

Evolution of Medical Patents in India

The patent policy pursued by India has made India a major international player in the generic drug market. The 1970 patent policy changed the situation in India dramatically. The TRIPS patent policy requires developing countries to only grant product patents. New processes cannot be patented because developing countries do not use process-by-process claims. As a result, inventions that can be patented in developed countries through the use of process by-product claims do not fall under TRIPS-compliant patent law in developing countries. Some generic drugs that are patented in developed countries and have product-specific claims are not protected in developing countries. The patent system has helped India reduce the cost of life-saving medicines and medicines offered in the country.

The 1970 patent policy took into account the needs of the poor in India. India's drug prices are one of the cheapest in the world today and are affordable to the public. On average, medicines made in India are more than 100% cheaper than the same medicines in the United States. The Government of India has fulfilled its constitutional obligations of socio-economic balance by setting maximum selling prices while leaving reasonable profits. TRIPS aims to balance the long-term social goal of providing incentives for future inventions and creations with the short-term goal of enabling people to use existing inventions and creations. I am. For pharmaceutical patents, the 2001 TRIPS and the Doha Declaration on Public Health clarified and expanded flexibility. The expansion took place in 2003 and a decision was made to allow countries that cannot manufacture their own medicines to import medicines manufactured under compulsory licenses.

- The agreements were aimed at creating an equity of sorts
- Developed and developing countries have a financial divide
- The worth and capacity of pharma industries depend on the economic sustainability and growth of the nations and hence a sharing and mutually dependent mechanism tries to share these technologies.
- Medicines are life-saving drugs hence the rights of inventors will have to be constantly balanced with the social responsibilities of the welfare states and their people-centric policies.
- Medicines and a right to treatment fall under broader implications of the right to life and hence the Governments have to constantly strive towards making them available to people so as to cater to their needs.

Compulsory licensing is when the government allows someone else to create a patented product or process without the consent of the patentee. In the current public debate, this is primarily related to pharmaceuticals, but it may also apply to patents in all areas. The agreement allows enforcement as part of the overall endeavour of the agreement to balance promoting access to existing medicines with encouraging research and development of new medicines. However, the term "forced enforcement" is not included in the TRIPS Agreement. Instead, the phrase "use other uses without the permission of the right holder" appears in the title of Article 31. Compulsory licenses are only part of this, as "other uses" include use by the government for its own purposes. Article 31 (f) of the TRIPS Agreement states that products manufactured under a compulsory license are "mainly intended for supply to the domestic market." This applies to countries where the manufacture of pharmaceuticals is permitted. This limits the amount of medicine that can be exported if it is manufactured under a compulsory license. And it affects countries that are unable to manufacture medicines and therefore want to import generics. They will find it difficult to find a country that can supply them with medicines manufactured under a compulsory license. The legal issues of the exporting country were resolved on August 30, 2003, to make it easier for WTO member countries to import their own medicines if they cannot import cheap generic medicines manufactured under compulsory licenses. Agreed to amend the law. The decision actually contains three exceptions.

- The exporting country waives its obligations under Article 31 (f). Any Member State can export generic drugs manufactured under compulsory licenses to meet the needs of the importing country.
- The importing country waives the obligation to pay the patent owner within the framework of the compulsory license to avoid double payment. Compensation is only required on the export side.
- If at least half of the members are classified as least developed countries at the time of the decision, the export restrictions for exports by the least developed countries and the least developed countries will be lifted under the regional trade agreement.

Recent Trends in Medicine Equity – Pandemic Effect

In pandemics and other public health emergencies, the cost-benefit combination of patents does not match what is needed for an effective policy response. The basic patent agreement, if successful, is to pay for future innovation while slowing the spread of today's innovation. In a pandemic

context, this transaction is a bad transaction and should be rejected altogether. The key here is to accelerate the spread of vaccines and other therapies, rather than delay them. Empowering pharmaceutical companies to block competitors and keep things under control by raising prices is going in the wrong direction altogether.

Which approach should I choose to drive innovation instead? How do you encourage pharmaceutical companies to bear the high R & D costs of developing new vaccines without giving them the exclusive right to manufacture and sell new vaccines? The most effective approach during the public health crisis is direct government support. Public funding for research and development, government advance promises to purchase large doses at set prices, and other related payments. And when we pay pharmaceutical companies, we don't hesitate to pay generously and even luxuriously: we offer pharmaceutical companies great profits and they prioritize this job above all else. And next time I want to be ready and enthusiastic to come to the rescue again Is it a crisis?

From the final quarter of 2020, it is becoming increasingly clear that the world's ability to counter this pandemic depends entirely on how the pharmaceutical sector and government can dramatically increase vaccine production capacity around the world. .. The recent US announcement on partial support for a joint waiver proposal filed by South Africa and India before the World Trade Organization (WTO) in October 2020 is not "amazing" or "amazing." We invited many experts. "symbolic". The original proposal was to protect patents, designs, copyrights and corporate secrets for vaccines, medicines and diagnostics, but current US support is to waive intellectual property rights to vaccines.

Disadvantages of Patent Waiver

The waiver of patents can discourage pharmaceutical companies from innovating vaccines. Because much time, research, resources, money, human resources, and human intelligence are invested in their development. The main drawback of abandoning a patent is the financial loss of the patentee whose intellectual property rights are at stake. The proposal to abolish the Covid-19 vaccine patent could undermine the patent that protects the innovations that are the pillar of the pharmaceutical industry's business model and allows companies to monopolize the sale of technology-based medicines for years. The IP patent forgiveness provides a shortcut for competitors seeking to acquire expensive technology. The two companies also say that promoting intellectual property will not speed up vaccine production, as there is a shortage of materials and it can take years to build capacity from scratch.

Some Possible Solutions At Equity Equalising

Blanket patent waivers are not feasible as a process- this is mainly because a mere waiver would not enable a country to ramp up production of vaccines or medicines due to the lack of technical know how and technology needed for the production. Hence licensing and sharing has to be the way out.

Patent pools are some adjustments of mutual international cooperation devices in the rea whereby cost cutting and financial help can be expected without compromising with IP rights of inventing companies and parties.

Transparent and voluntary licensing agreements for the sake of humanity has to be persuaded and not forced upon the private and the pharmaceutical giants

Financial and commercial enterprising activities and the monetary benefits aimed at by the companies cannot be wholly undermined but at the same time, have to be balanced with the needs of fighting a pandemic with shared resources

Medicine Equity Would Operate on Two Levels

- Internationally between countries
- Internally within countries

Internal Government policies must try to provide free medicines and vaccines to the people so that the fight against a disease that does not distinguish between the rich and poor can be carried out.

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