

## IP Hotline

May 26, 2003

### PATENTS AMENDMENT ACT, 2002 AND PATENTS RULES, 2003 COME INTO FORCE

The Patents Act, 1970, of India, has been amended with effect from May 20, 2003 vide the Patents (Amendment) Act, 2002. The new Patents Rules, 2003 have replaced the Patents Rules, 1972. The amendment has been introduced to meet India's obligations under TRIPS. The new Rules aim at procedural simplification and speeding up of the patent delivery mechanism.

Some of the important amendments are :

- The term of a patent has been extended to 20 years in respect of all inventions.
- The following have been added to the list of innovations which are not inventions within the meaning of the Act and in respect of which no patent can be granted: plants and animals (other than micro-organisms) including seeds, varieties and species and biological processes for production or propagation of plants and animals; a mathematical or business method or a computer program per se or algorithms; a literary, dramatic, musical or artistic work or any other aesthetic creation including cinematographic works and television productions; a mere scheme or rule or method of performing mental act or method of playing game; a presentation of information; topography of integrated; an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components. *TRIPS permits member states from excluding certain innovations from patentability.*
- In process patent infringement suits, the defendant may be directed to prove that the process used by him to obtain a particular product, which is identical to the product of the patented process, is different from the patented process. The concept of reversal of burden of proof has thus been introduced. *A Plaintiff in a process patent infringement suit, may, at the discretion of the court, not have to bear the burden of proving that the process used by the Defendant is identical to the patented process. This provision apart from being in compliance with TRIPS, is also similar to a provision in the existing law on evidence in India, which states that when a fact is especially within the knowledge of someone the burden of proof should fall on that person. This would make it easier for patentees to prosecute process patent infringement suits.*
- The following acts do not constitute infringement:
  - making, constructing, using or selling a patented invention solely for uses reasonably related to the development and submission of information required under any Indian law or in a foreign law, that regulates the manufacture, construction, use or sale of any product;
  - importation of patented products by any person from a person who is duly authorised by the patentee to sell or distribute the product. *In the absence of this provision all imports of patented products by third parties, without the patentees consent was an infringement. The implication of this provision is that import of the patented product from a person who is duly authorised by the patentee to sell or distribute the product will not constitute an infringement of the rights of the patentee.*
- In infringement suits, the Court can now order seizure, forfeiture or destruction of infringing goods and also materials and implements, used for creation of infringing goods.
- An additional ground for the grant of a Compulsory License has been inserted, viz. "the patented invention is not worked in the territory of India". An implication of this provision could be that the mere import of the patented product by the patentee in India may not be viewed as "working in the territory of India".  
The following grounds are also to be taken into account for grant of compulsory license: a circumstance of national emergency; or a circumstance of extreme urgency; or a case of public non-commercial use, which may arise or is required, as the case may be, including public health crises, relating to Acquired Immuno Deficiency Syndrome, Human immunodeficiency Virus, tuberculosis, malaria or other epidemics. Some Pharma Multinational Companies (MNC) bodies like Organisation of Pharmaceutical Producers of India (OPPI) had mooted introduction of a parameter for determination of the "reasonable price" qua compulsory licenses, (*patented invention not available to the public at a reasonably affordable price* - is one of the grounds for the grant of compulsory licenses). However, the Patent Rules, 2003 have not introduced any such parameters. In any event, the Rules cannot override or restrict the meaning of or operation of the main legislation.

The Government of India has also rejected a pharma MNC's proposition that the 'TRIPS agreement prohibits use of data filed in the course of obtaining regulatory clearance for commercial research' and has not included 'data exclusivity' in the Amendment Act, 2002. *"Data exclusivity" is jargon for mandatory non-reliance on originator's data (mainly of drugs and agro chemicals), published to meet regulatory obligations, for unfair commercial use during a fixed period of time. In other words, the data filed by a company on the results of clinical trials and side effects should not be used by other companies for their commercial purposes.*

## Research Papers

### Little International Guide (India) 2024

November 08, 2024

### Unmasking Deepfakes

October 25, 2024

### Are we ready for Designer Babies

October 24, 2024

## Research Articles

### The Bitcoin Effect

November 14, 2024

### Acquirers Beware: Indian Merger Control Regime Revamped!

September 15, 2024

### Navigating the Boom: Rise of M&A in Healthcare

August 23, 2024

## Audio

### Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

### Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

### Renewable Roadmap: Budget 2024 and Beyond - Part II

August 26, 2024

## NDA Connect

Connect with us at events, conferences and seminars.

## NDA Hotline

[Click here to view Hotline archives.](#)

## Video

### "Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI8 event in Riyadh

October 31, 2024

### Analysing SEBI's Consultation Paper on Simplification of registration for FPIs

September 26, 2024

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.