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Patent Laws in India Protect and Promote Innovation

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Abstract-

Patent procedures may vary in different countries. For countries like India, patent laws are vital in protecting and promoting innovation. The first step in the patenting process is to contact the relevant national or regional intellectual property (IP) office and submit an application. In addition, to seek protection in several countries, it is possible to file an international patent application under the Patent Cooperation Treaty. Patenting is an essential process for protecting and promoting intellectual property. It ensures that others cannot use an invention, product, or process without the permission of the owner, although this permission can be given through a licensing agreement. Several international treaties, including those adopted by India, provide a framework for protecting and promoting intellectual property. By protecting and promoting intellectual property, these treaties encourage individuals and businesses to invest in the research and development of new goods, services, or technologies. With the security of intellectual property, innovators can share their ideas freely with the rest of the world. In our research paper, we will attempt to examine the economic effects of intellectual property protection on countries, focusing on whether such effects are beneficial or not. In addition, we will also look at the factors that have led to the need for intellectual property laws.

Keywords- *I.P.R. (Intellectual property rights), TRIPS (Trade Related Aspects of Intellectual Property Rights US the United States), WTO (World Trade Organization), IPAB (Intellectual Appellate Tribunal Board).*

1-Introduction-

Intellectual property rights are measure legal rights that give creators protection for original works, inventions, or the looks of product, creative works, scientific developments, and so on. Copyrights, Patents, Trademarks and Trade secrets are measuring intellectual property (IP). Indian patent Act was amended in 2005 underneath obligations to journeys.¹ With the TRIPS Agreement, India has today become the most challenged economy among the major economies

¹(Rawat, (2009-10-31).) India – Protecting Intellectual Property. (2024, JAN 12). Retrieved from Official Website of the International Trade Administration.

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of the world with respect to the protection and enforcement of Intellectual Property (IP) rights yet despite many efforts of the government the expected results have still not been achieved. Over the past few years, the Government of India has taken positive steps to strengthen its IPR regime, Similar to Section 3(d) which was added to the Indian Patent Law in April 2005, it specifies a special condition that must be met in order for some kinds of pharmaceutical innovations to be eligible for patent protection. Section 3(d) states that a novel version of a known drug must demonstrate improved efficacy in comparison to the substance's existing efficacy in order to be patentable. It needs to demonstrate better efficacy than the established efficacy of the substance. India signed the trade agreement TRIPS to improve intellectual property and came into the world's attention by becoming a member of the World Trade Organization (WTO) in 1995. The TRIPS Agreement on Fair Trade Approaches to Intellectual Property Rights is an agreement with other countries in the world that sets standards on the forms of intellectual property rights. Intellectual property (IP) regulation that applies to citizens of other WTO members is enforced by the World Trade Organization (WTO). Patents should be granted for all innovations in all disciplines of technology, whether methods or products, as long as they are novel, creative and have the potential for industrial use. In 2016, India unveiled its first ever National IPR Policy.

2-Research question-

A-Was the decision of Novartis case revolutionary for the protection of intellectual property in India?

Based in Basel, Switzerland, Novartis International AG is a multinational pharmaceutical corporation that was ranked second in sales worldwide in 2010. Novartis was the third-largest beneficiary of patents registered in India after Roche and Sanofi. Novartis was the manufacturer of "Imatinib" and had patent rights for 20 years. Disputes arose for new patents after the expiry of the 20-year period. The controversial issue of "efficacy" -Novartis argued that the salt form would have a high level of availability in the patient's body, but the Madras High Court clarified that "efficacy" means "therapeutic efficacy in curing a disease". Novartis then produced a new crystalline salt form of Imatinib mesylate. It claimed it was a new product and applied for patent rights for the next 20 years. But the patent office rejected the claim of Novartis, then it went to the Intellectual Appellate Tribunal Board and it also rejected, IPAB means Intellectual Appellate Tribunal Board, it works under the Ministry of Commerce and Industry. The IPAB had upheld the Indian Patent Office's argument that the drug, Gleevec, is a new form of Imatinib and therefore not patentable as per Section 3(d) of the Indian Patent Act. Novartis then took the case to the Supreme Court, which also rejected its claim. In 2006, the Indian Patent Office ruled that the new form of salt was not eligible for a new patent, as it did not meet the "increased efficacy" provision required under Section 3(d). The Madras High Court held in 2007 that the appropriate route to challenge TRIPS non-compliance is the WTO dispute settlement body and not Indian courts. The Supreme Court also rejected this claim. It is significant to remember that the Supreme Court has made it clear that not all incremental advancements involving chemicals and pharmaceuticals are prohibited from receiving patent protection by Section 3(d). Provided they pass the test of extended scope of section 3(d) In India, about 2, 00,000 (Two lakh) people suffer from chronic myeloid Leukaemia and about 30,000 relapse every year after this decision, the prices of medicines will remain low, all these people will benefit, which will help in solving the social and economic problems of the country.²

² (India – Protecting Intellectual Property, 2024) India – Protecting Intellectual Property. (2024, JAN 12). Retrieved from Official Website of the International Trade Administration.

“On the other hand, we have a large number of companies that have invested billions in research, in the development of new molecules, in new drug discoveries and in research. On the other hand, providing cheap and affordable medicines and health care is a social responsibility. We have to strike the right balance.”

B- Has innovation been encouraged and protected with the emergence of the new patent regime in India?

The Patents (Amendment) Act, 2005 brought product patents into India and added an alternative patent regime aimed at protecting the continuing rights of patent holders. This Act was created to succeed India's commitment to the World Trade Organization (WTO) with respect to the Convention on Goods Rights in All Aspects of Trade (TRIPS). The Indian Patent (Amendment) Act, 2005 itself addressed some of the best patent related issues in this journey

- Adoption of new definition of 'Pharmaceutical substance' which is important for developing countries like India.
- The exclusion of 'new use for highly recognized substance only these days' and it is sure to result in 'new use for highly recognized substance'.
- Manufacturing products which will also be provided patent protection under the new system.

Furthermore, the Act more defined the time period 'new invention' and similarly placed restrictions on the scope of patentability (section 3(d)). Section 3(d) clearly states that a patent shall not be granted on the subsequent basis, merely by the discovery of a better-known substance which does not add to the better-known efficacy of that substance, merely by the discovery of that substance in a superior new property or new use for the coveted substance and will have a highly accepted method.³

Real purposes of patent in Indian law- Section 83 of the Patent Act makes this clear and applies general principles to patented inventions, which are as follows –⁴

- That patent class is provided to encourage new inventions and to ensure that the invention works on a commercial scale in India and is fully practicable without any delay;
- That the patentees 'monopoly on the importation of patented goods is not the only reason they are awarded;
- The protection and social management of patent rights contributes to the advertising of technological innovation and the switch and diffusion of technology for the mutual benefit of producers and customers of technological records and as tributaries to social and financial well-being and stability;

Lukose, D. L. (2016). PATENT EVER GREENING: LAW AND ETHICS. 7th International Conference on Information Law and Ethics. Associate Professor, University School of Law and Legal Studies, Guru Gobind Singh Novartis Ag vs Union Of India & Ors on 1 April, 2013, CIVIL APPEAL Nos. 2706-2716 OF 2013 (ARISING OUT OF SLP(C) Nos. 20539-20549 OF 2009) (Supreme Court April 1, 2013).

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- That the granted patent no longer impairs the safety of public fitness and diet and as an instrument for furthering public entertainment in areas of fundamental importance to the socio-economic and technological improvement of India will work;
- That the patent granted no longer hinders in any way the Central Government from taking measures to protect public health;
- That the right of imprisonment is not abused by the inventor or any person acquiring title or rights to the patent from the inventor, and that in consequence any person acquiring title or rights to the patent from the inventor shall no longer claim these rights. Practices that inhibit change or adversely affect the worldwide switch of technology; and
- A patent class remedy granted to make the benefits of a proprietary invention accessible to the general public at a fairly reasonable cost. They are not allowed to interfere with the protection of public health, but patents must serve as a means of furthering the public interest, especially in areas critical to India 's socio-economic and technological development.

Moving towards Section 83 we will realize that many of the practices adopted mainly by the developed countries lead to a class measure to obtain patents which are a class measure against the interests of the developing and least developing world. Such practices include bio-piracy, misuse of cognitive materials, mangroves etc. Within the last decades the legal system has become victim to various forms of abuse such as patent Evergreening, patent trolling, patent ticketing, etc. a serious injury to innovators technology producers and ultimately the public.⁵

3-Methodology-

On this subject, most of the countries have praised India in an open forum, which can be seen in this research paper. Courts in India also enacted laws specifically aimed at eliminating patent abuse, which, in the case of many pharmaceutical companies, potentially prevented them from granting patents despite Indian laws. We will be able to put it on an open platform and achieve success in providing affordable and effective medicines in the world of health in the poor countries of the world. Therefore, this research will prove helpful in strengthening people's knowledge on this subject. In this research paper we will try to verify the hypothesized questions by answering them. It has been observed for quite some time that Intellectual Property Rights (IPRs) and their wide multidimensional impacts have attracted considerable attention from both policy makers and academicians. Despite the existence of substantial theoretical and empirical literature, the evidence regarding the impact of IPR protection on innovation and economic growth is mixed. In this research work, the researcher will conduct a literature review and meta-analysis of the selected topic and analyse in his report how IPRs have an overall positive impact on innovation and economic growth.

⁵ 5. (Lukose, 2016) India – Protecting Intellectual Property. (2024, JAN 12). Retrieved from Official Website of the International Trade Administration.

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4-Conclusion-

There is currently no Indian civil or criminal legislation that expressly guarantees the security of trade secrets, making their enforcement and preservation extremely challenging. While India relies solely on contract law to provide protection to trade secrets, this is only effective in circumstances in which a trade secret hinges on a contractual relationship between its owner and the party accused of misappropriation. In India, criminal penal laws are not clearly available to prevent trade secret misappropriation and obtaining a civil remedy in such an environment is reportedly a very difficult goal.

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