

Indian industry divided over review of 86 patents

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A recent request by Indian companies seeking the re-examination of 86 local patents for reasons such as inadequate scrutiny has evoked strong reactions across industry.

The Organisation of Pharmaceutical Producers of India (OPPI), which represents multinational companies, said that India's existing patent system offers adequate opportunity to challenge patents that have allegedly been granted wrongly.

"After publication of the patent applied for in the patent journal, one can file a pre-grant opposition. Assuming someone has missed this opportunity, the provision for filing post grant opposition will still be there," Tapan Ray, director general of OPPI, told *Scrip*.

If both the opposition opportunities are missed, there still exists the option of going to court to invalidate such patents, OPPI added. "In the absence of any of the above measures not being taken, the reasons and motive behind allegations that Section 3d is being violated, are indeed very difficult to understand," Mr Ray said.

An industry expert also claimed that the review call may be a criticism of the Indian patent office. Section 3d of the Indian Patent Act lists the exceptions to patentability and includes "the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance".

The Indian Pharmaceutical Alliance (IPA), which represents leading domestic companies, recently asked the ministry of commerce and industry to review 86 patents - 81 from foreign companies and five from Indian firms, including an IPA member.

The IPA claims that an examination of some patents granted between 2005 and 2008 by the Indian patent office suggested that these were done "without or with inadequate application" of sections 3 (d) and (e) of the Indian Patent Act. It also claimed that despite the availability of the provision for the post-grant opposition, the "ugly reality" was that many law firms refused to take briefs from national companies, since their multinational clients did not permit them to represent generic companies.

IPR terrorism

Cipla's chairman, Dr Yusuf Hamied, however, supported the IPA's move against what he termed frivolous patenting and "intellectual terrorism".

He cited the case of GlaxoSmithKline, which withdrew its patent application for the AIDS fixed-dose combination Combivir in India and Thailand in 2006 after it was opposed by NGOs that claimed that the product was not a new invention but simply the combination of two existing drugs, zidovudine and lamivudine. GSK said at the time that it had decided to withdraw its patents and patent applications directed to a specific formulation of Combivir before the demonstrations by the NGOs.

Dr Hamied also took the fight against frivolous patenting beyond India. He demanded that if the intrinsic patent filed in the country of origin was revoked, then the patent holder should withdraw patents on the product in all other countries, referring to Cipla's successful challenge against a GSK patent for Seretide/Advair (fluticasone propionate and salmeterol) in the UK for obviousness and lack of novelty.

review and revoke

The IPA has urged India's Controller General of Patents and Trademarks to order a re-examination of all 86 patents it has identified and use his powers to revoke those that do not meet patenting standards set.

The IPA says its study revealed that a large number of the patents had been claimed and granted to new forms of known substances and combinations of old drugs. "This is done in some case even without claim by the applicant of significant enhancement in efficacy or, where the claims were made, without verification of such claims by the patent examiner. There is a wide gap between the law and the practice," the industry body said.

The IPA has also sought changes in patent guidelines to include more meaningful disclosures in the abstracts so that inventions can be easily identified and the creation of deterrents to filing "undeserving" applications and grant of improper patents, in order to restore the confidence of all stakeholders in the working of the Indian patent office.

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