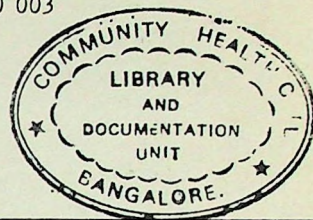


NATIONAL SEMINAR ON PATENT LAWS
NOVEMBER 22, 1988
INDIA INTERNATIONAL CENTRE
40, Lodi Estate, New Delhi- 110 003



OCCASSIONAL PAPERS - VOLUME II

CONTENTS

- Paper No.1 A Monopoly by any other Name
 - Dr.Rajeev Dhawan
- Paper No.2 Indian Patent Law & the Paris
 Convention - Dr.Nitya Nand
- Paper No.3 Renewed Foreign Interest in Patents
 - The Reality and its consequences -
 B.K.Keayla
- Paper No.4 Reprints of newspaper cuttings

Patent law is in the news again. This time at the behest of the multi-nationals supported by powerful nations hungry-even desperately so - for markets over which they want exclusive monopolies. At the Uruguay Round of GATT Multinational Trade Negotiations in the June 1988, a collective statement, produced after two years of deliberation, was presented by European, American and Japanese business. Entitled, "Basic framework of GATT Provisions on intellectual Property", its purposes were to take

"...two important steps...(a) the creation of an effective deterrent to international trade in goods where there is an infringement of intellectual property rights; and (b) the adoption and implementation of adequate and effective rules for the protection of intellectual property"

It is easy to surmise: for whose benefit? And, to what end? Meanwhile the lobbies have been busy to persuade India to change its relatively recently enacted Patents Act 1970.

This conspiracy of stealth is made possible by the apparent remoteness of the patent law from the lives of the people. It is rendered all the more obscure when central issue is posed in the mystifying form: Should India join the Paris Convention? What is hidden from the public is the impact of all this on their lives: more expensive medicine, a hike in prices of items using chemicals and fertilizers, a strengthening of product monopolies all round and the marginilization of India's own research and development (R&D) efforts.

The new moves are not an attempt at persuasion. They are backed by the threat of a protectionist trade war; and, much else besides.

The Paris Convention

The Paris Convention 1883 was part of a centuries old trend of the Western nations to try to carve out areas of the world for exclusive exploitation. If the Bull of Alexander IV divided the world into two (giving the East to Portugal and the West to Spain) and various grants (like those to the East India Company) gave exclusive trade rights to chosen national companies, the Paris Convention 1883 was an imperial splitting up of the world markets to feed the expanding demands of an acquisitive capitalism.

What the Paris Convention - amended in 1900 (Brussels) 1925 (The Hague), 1934 (London), 1958 (Lisbon) and 1967 (Stockholm) - did was to interpret "industrial property in the broadest sense... not only to industry and commerce proper but likewise to agricultural and extractive industries and to all manufactured and natural products"

(Article 1(3). National of signatory nations could by the simple expedient of taking out a patent create an exclusive monopoly for the product and/or the process by which it was made. All this without even committing oneself to producing the product or using that process in the country for which that market is claimed (Article 5 (non-forfeiture). A stake could be claimed to the markets of the member nations by filing in any one nation first (Article 4 - right to priority); and, all the rest within 12 months. And, to make sure that the less developed nations did not keep rich and powerful foreigners out, equality of national treatment was proclaimed (Article 2 and 3). What provisions! Guaranteed markets for a substantial period of time in countries where the monopoly holder did not have to spend a paisa manufacturing the product! The grant of a patent was compulsory even, if sale restrictions were imposed round the product (Article 4 quater). A monopoly could also be built round the product from a patented process (Article 5 quater). Compulsory licensing, if the patent was not used for three years, and revocation, two years later, was possible unless the "patentee could justify) his inaction for legitimate reasons" (Article 5(4). All this in the name of the poor inventor (Article 4 ter) whose creativity was - in virtually all cases - absorbed or cheaply bought out by mighty enterprizes.

II

The case for India joining the Paris Convention was supported by the Bakshi Tek Chand Report of the Patents Enquiry Committee 1948-50 (prs 265-70 pp 110-111); but, decisively rejected by the Ayyangar Committee Report on the Revision of Patents Law 1959 (prs 304-8 pp 117-9). Since then India has not looked back. The patents Act 1970 was a genuinely indigenous response, following from a move in the United Nations by Brazil in 1961 to reagitate the issue of the world patents system. From 1974 UNCTAD initiated further discussions from the point of view of LDCs. But, the rich and powerful nations have struck back both publicly, as evidenced by the document to GATT (1988), and, more covertly through the silent but powerfully effective means of business and official diplomacy. The impact of this diplomacy has been felt in India. Responding to a parliamentary question on 25 April 1984, the Minister of State accepted that there was pressure from the World Intellectual Property Organisation (WIPO) to join the Convention; but that no decision had been taken yet (48 L.S.D. (7d.)153-4) Even though, it was made clear pharmaceuticals would be protected (ibid: cols 77-8); mischief was afoot. But, WIPO pressure is only a constituent part of a much more uncomprizing pressure is being brought to bear on the government now.

India's own law is the product of much deliberation. Two Committees (Bakshi Tekchand, 1950; Ayyangar, 1959); three Bills (1953, 1965 and 1967), two Joint Committees of Parliament (1965-7 and 1968-70) and long debates in parliament on the Patents Act 1970 (44 L.S.D. (4d.) cols. 1-164; (29 August 1970); 73 R.S.D. 39-126 (3 September 1970)). One has only to skim over the Joint Committee Reports to see how extensive the multi-national lobbies were. Indian markets were ripe for capture; and a new patent law was the means to achieve that end.

III

India's patent law seems to give the public interest priority over the rights of the individual inventor (in this case subsumed by rich manufacturers and multinationals - after all, it is only multi-nationals who seek trans-national markets). In a spirit entirely at variance with the Paris Convention or, for that matter, multi-national demand - Indian legislation seeks to ensure not only that inventions are encouraged but "worked on a commercial scale (in India) ... to the fullest extent that is reasonably practicable and without delay; and... that they are not granted merely to enable patentees to enjoy a monopoly for importation of the patented article" (Section 83). That the Act falls short of this declared ideal is another matter.

And so, many exceptions are made. Patents dealing with atomic energy cannot be granted and liable to be revoked (Sections 4 and 65 ; also Raytheon A.R. 1974 Cal. 336). Patents for food, medicine and drugs will last 7 years from the date of the patent, as opposed to the usual 14 (Section 53). Such food, medicine and drugs along with those for chemical processes shall be just process and not product patents (Section 5). The import monopoly for products and exclusive use of processes can be breached by government for its own use (Section 47). A patent may be revoked in the public interest if "a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public" (Section 66). Those who do not work their patents in India for 3 years can be forced to grant compulsory licenses if the "reasonable requirements of the public ... have not been satisfied or the ... invention is not available to the public at a reasonable price (Section 84 and 85). Certain patents dealing with food, drugs, medicine and chemical processes will be automatically endorsed with "licenses of right" and are vulnerable to a form of compulsory licensing straightaway (Section 86). Two years after a compulsory licence has been granted, if the requirements of the public remain unsatisfied the patent may be revoked (Section 89).

This scheme in the Indian Patents Act 1970 differs greatly from the Paris Convention. Its purpose is to prevent monopolies, encourage manufacture in India, provide specially for food, drugs, medicine and chemicals and give overriding importance to the public interest. Yet, far from falling short of reasonable standards, many feel that the Indian legislation does not go far enough in the elimination of foreign monopolies and protecting the justifiable interest

of the public.

IV

The truth about using patent law for creating monopolies for foreigners is much worse than is normally imagined. From 1856 when the first protection to patents was given, Indians filed few applications. None out of 33 in 1856, 45 out of 492 in 1900; 62 out of 667 (though 199 originated in India) in 1910; 345 out of 1725 (399 originating in India) in 1949 (Bakshi Tek Chand Report (1950) 121) were filed by Indians. Since Independence non-Indians dwarf Indians for applications for patents (1950:81%; 1955:87.1%; 1960:85.3%; 1965: 85.4%, 1970: 78.3%). (Ayyangar Report (p 370) and Annual Reports of the Controller). Under the Patents Act 1970, the position has not altered (1972-3:68.6%; 1976-77:56.8%); 1076-7:71.8%) (ibid:Annual Reports). In 1986-87, the number of foreign patents sealed in India were 74 %. For that year, 83.4% of the total patents in force in India were foreign owned. And, if this picture is not striking enough, it should be remembered that even Indian owned patents are likely to be manipulated by foreign business; or be the product of collaborative ventures. Indeed, foreign ownership of patents registered in India has to be understood against the backdrop of increasing foreign collaborative ventures. The largest number of patent applications in India came from Americans. Further out of 67 foreign collaborations in May 1988, 43 were technical, 4 drawing and design and 20 financial. Why invest money when you can sell closely guarded knowledge profitably?

There are many problems with the operation of the patent law. In 1986-87, 10,363 applications had to be dealt with by the patent office, out of which 6874 had to be carried over from the previous year. 4874 applications were examined, 1006 abandoned for legal reasons and, 5250 carried over to the next year and only 1706 accepted during the year. It would appear that the law courts are not the only institutions plagued with arrears of cases!

But, apart from these management difficulties, I think that there is an incomplete appreciation of the social and public purposes behind the Patents Act 1970. Let me take one complex but important example. In India, only a process patent is given for food, drugs, medicine and chemical processes. Both the Joint Committee on the 1965 Bill (see pr. 19 p.viii) and the 1967 Bill (see pr.18 and 25 p. vii) categorically refused to accept that a product monopoly can be built out of a process patent in respect of products made from that process. Shri Dandekar tried to introduce an amendment to make such a monopoly possible on the floor of the Lok Sabha (44 L.S.D. (4 d.) 95-8(29 August 1970)); but this move was decisively rejected by the Minister, Shri Dinesh Singh (ibid:col 102). Yet the jurisprudence on patent law continues to build such product monopolies into process patents as shown by Justice Mukharji's views in the Imperial Chemical Industries case (A.I.R. 1978 Calcutta 77). Seemingly, technical, the failure

is one of juristic theory - a failure to fully embrace the public interest implications, and philosophy, of the Patent Act 1970 itself. Alongside, as my friend, Upendra Baxi, points out by reference to judgements like those in the Monsanto (A.I.R. 1986 S.C. 712), even where patents are revoked for want of subject matter, the Indian system of granting stay orders results in giving patents monopolies a life that they should never have had in the first place, as the cases drag through our courts.

The real problem lies deeper. Very few countries have done as much work and thinking about the law of patent as India. At first, both our juristic thinking as well as political thinking about this subject was imitative, drawing inspiration from the English law and embarrassed that our law was not following "progressive" practice elsewhere in the world. But, since the early sixties, we have looked at these questions anew; and, sought to put them in a challenging and interesting framework. Yet the law remains ineffective in ways that initiate against the public interest. Although we have enabled cheaper food, drugs, medicine and chemicals, they are still expensive. We have not been able to stop foreign domination of the use of our patent law. Patent remains a powerful instrument to construct monopolies; and is relatively free from the operation of the monopolies and restrictive practices law. (Sections 15, 36D, 37, 39 of the MRTP Act 1969). Yet, time and time again, we are called upon to revise our conceptions in favour of a more liberal law, more inclined to absolutist notions of private property and, ostensibly, protecting the creativity of the inventor. The poor inventor, alas, in most cases remains relatively poor. The real protagonists are the big companies who - having already reaped up tax benefits for the R&D work of their inadequately compensated employees - threaten to make their research less available; and use their political muscle to threaten financial and economic disaster. We need to get back to our debate, seeking support from those nations who are similarly placed. Instead, we seem to be getting ineluctably drawn into their debate; and, from then on, into the inevitable monopolistic consequences that follow.

INDIAN PATENT LAW AND THE PARIS CONVENTION

DR.NITYA NAND

It is understood that a change in the existing Indian patent laws and India's joining the Paris Convention is under active consideration of the Government of India. Some articles favouring India's accession to the Paris Convention have recently appeared in the Press (Times of India, 7th December, 1985). The present write-up makes an analysis of the provisions of the Paris Convention and discusses the set backs. India's accession to the Convention would cause, to the industry in general and the chemical and drug industries in particular.

There is no getting away from the fact that the developed and developing countries are "unequals" in industrial strength, and when the present patent systems were designed to protect the interests of industrialised countries it would be difficult to reconcile the interests of both in the same system.

International Convention for the Protection of Industrial Property or Paris Convention, as it is popularly known was first signed in 1883 as a multi-lateral treaty among 11 nations. Since then it has been revised six times, the last being 1967 at Stockholm, each revision superseding the earlier version. The Convention could attract in more than 100 years of its existence a total of just 96 members and suprisingly, till date, has no Preamble. It means, in simpler term, it has no explicit statement regarding its objectives and does not contain at any place the importance of national and consumer interest nor any specific statement beneficial to developing countries in any way.

The convention has a total of 30 Articles and the Article 1 defines the scope of Industrial Property. It includes all manufactured or natural products and encompasses Patents of all types, viz. fresh, importation, improvements, addition etc. It covers all spheres of industrial activity.

The status of industrial development of any country, developing or developed, is always measured in terms of the strength of its indigenous industry and not that of the multinationals operating in that country. India's tenth position among the industrialized nations and UNIDO's placement of India in the list of countries having a well developed drug industry speaks well of the progress made by the indigenous national sector of our drug industry. The era of rapid progress of Indian industries in general, and of its chemical and drugs sector in particular, got greatly accelerated after the enactment of the Indian Patents Act, 1970. This single act of our Government put the Indian drug industry on the threshold of self-reliance, removed our dependence on imports of drugs and encouraged local industry to develop and strengthen its R & D base.

The strength of the Patents Act of 1970 are its favourable provisions for compulsory licensing, automatic licences of rights, grant of process patents only and reduction in period of protection to only 5 years after sealing of the patent. All these will get nullified once we sign the convention. The provisions of the convention are so heavily weighted in favour of foreign patent holders that there are virtually no provisions regarding the obligations of the patentee, concept of public interest and the rights of the state which grants patents. Under Article 5 (and clauses, sub-clauses thereof) of the Convention a patentee can avoid commercial production of its process for a long period and monopolise import of the products as the provision of compulsory licensing is rather weak and forfeiture almost impossible. Article 5A(1) States explicitly "Importation by the patentee into the country, the articles patented in any of the Convention countries, shall not entail forfeiture of the patent". This provision encourages importation of patented product rather than taking up of the commercial production in the country of patent grant. At no place the Convention requires compulsorily the working of the patents. Furthermore, Article 5B states that the protection of industrial designs shall not, under any circumstances, be subject to any forfeiture, either by reason of failure to work or by reason of the importation. Article 5 alongwith its clauses and sub-clauses is so favourable to patentees that for any developing country it is impossible to break the stranglehold of patentee having vested interests. The provisions of this article leave no scope for any indigenous industry to develop and operate.

The Convention is so much tilted in favour of developed countries that still almost half of the developing world is out of it. The accession to this Convention does not end a developing country's, like India, isolation but makes it recipient to the technology which the patentee wants to transfer and not the one which the developing convention country wants. And the terms of this transfer are also dictated by the patentee and not by the recipient. In India's case not joining Convention has in no way deterred the flow of technology even the sophisticated ones. The figures in this regard are explicit enough. The number of collaborations for technology transfer have gone up from 183 in 1970 to 359 in 1974, 526 in 1980, 673 in 1983, 756 in 1984 and 1236 in 1985. During the current financial year there has been a further increase in foreign collaborations and that too from the most advanced countries USA and West Germany. Thus this depends more on Government licensing rather than the Convention. Many articles of the Paris Convention are amenable to different interpretations and this will lead to unnecessary litigation and that too many a time in the courts of other countries, which in turn, will lead to outflow of scarce foreign exchange. Some such Articles (alongwith clauses, subclauses thereof) are 4,5,6,7,8,9,10,20,25,28, etc. Even our programmes for atomic energy and power development will be jeopardised as we can be dragged into international courts for infringement of some of the components used in atomic power plants etc.

The interested parties are advancing the argument that a participating country is obliged to apply its own laws to the inventions of the nationals of other convention countries only with some minimum rules. What are these so called, minimum rules? Article 25 of the Convention states clearly that the country joining the Convention will undertake measures necessary

to ensure the application of this Convention. Moreover, sections 48 and 99 of the Indian Patents Act are not in harmony with Article 10 bis of the Paris Convention which states that the countries signatory to the Convention are bound to assure to the nationals of other member countries effective protection against "unfair competition". It is feared, if India signs this Convention most of the modern drugs available now will disappear from the Indian markets as the foreign patent holder, on the basis of their priority claims in their home countries (as applicable to all Convention countries) will file cases in courts against the local manufacturers and stop production by getting injunctions.

Application of Article 8 of the Convention which reads that a trade name shall be protected in all the Convention countries without the necessity of filing or registration whether or not it forms part of a trademark, read with Article 4 which gives priority from the date on which the first application in the home country was filed, will again lead to a chaos in drug production as every foreign patentee will start claiming priority of his product based upon filing of the first application and would also bring their own trade (brand) names

Joining the Convention, in no way, going to improve the technological capabilities of our indigenous sector, these capabilities are already self-evident. Our drug manufacturing units, through the liberal provisions of Patents Act of 1970, are producing sophisticated drugs of internationally acceptable standards, e.g. nifedipine, hydrochlorthiazide, diloxamide furate, ethambutol, tinidazole rifampicin, all without the help of foreign technologies. Moreover, many of our drug firms (national sector) have obtained Food and Drugs Administration's approval for their manufacturing facilities and standards, again without the help of any foreign technology. Such a situation, a flourishing and committed national sector, would certainly not have been possible had India joined the Paris Convention.

The crux of the matter is how India can achieve further Industrial growth to meet its ever burdening domestic demand and create potential for export. It hardly needs emphasis that to become industrially strong we have to be self-reliant in technology and in resources both in terms of materials, technologists and scientists. By joining the Convention we will only open the flood-gates to foreign patent holders which would then start a chain of litigation with indigenous firms. Articles 4,8,9 and 10 (some specific clauses thereof) are few such ones, open to any vested interpretation. Almost 98 per cent of the new (or first time) patents filed world over every year are from the developed countries and just 1 per cent are from developing countries. This will surely be a case of one-way traffic where all the advantage would lie with the foreign patentees but with minimum of risk. The convention gives reverse system of preferences for foreign patent holders as against Indian Nationals.

How much fair the Paris Convention is to the developing countries has been so well illustrated in the following para from UNCTAD's report on "International Patent System." "Since its inception the Convention has grown haphazardly. Neither at the time of its adoption nor during its six subsequent revisions has the protection of specific interests of developing countries found any reflection in it.

The Convention itself lacks structural homogeneity: differences in the types of members of the Convention and of its various Acts; differences in the types of industrial property dealt with and in the possibility of accession to one or another set of its articles. The asymmetry inherent in its provisions-detailed obligation on countries versus feeble reference to control of private monopolies for safeguarding public interest; independence of patents with respect to countries but dependence of countries with respect to patents; and speed of entry into the convention contrasted with slowness of exit-work towards making the Convention serve as an instrument of consolidating private rights of patentees without ensuring equivalent obligations on them in public interests".

Patent system has been used by highly industrialized countries to restrict the development of indigenous industry in the developing countries. It was on account of this consideration that Government of India took the initiative of modifying its 1911 Patents law and the new Patents Act 1970 having reduced life span for patent protection, in the vital fields of insecticides, pesticides, liberal provisions for compulsory licensing and grant of process patent only for chemicals & drugs was enacted. Any change in this set-up, as is being planned now, should be carefully considered with all its implications.

The Government should not under the pressure of vested interests go back on the modifications made in the old patent Act of 1911 and join the Paris Convention. This will be a retrograde step and will have serious repercussions on the national sector of the pharmaceutical and chemical industries. Considering that it took almost 20 years of discussion and debate in various forums before the 1970 Patent Act was enacted by the Parliament. No change should be made without public debate and consultations with scientists and technologists. It is the 1970 Patents Act which suits our interest most and any deviation from it will benefit the vested interests only. Once we accede to Paris Convention there will be no going back, it will take a minimum of six years, to get out of it, by which time we would have seen the end of many industries.

DR. NITYA NAND
Former Director,
Central Drug Research Institute; and
Chairman,
National Working Group On Patent Laws

RENEWED FOREIGN INTEREST IN PATENTS
THE REALITY AND ITS CONSEQUENCES

B.K. KEAYLA

International interest in the law and policy relating to patents has taken many forms. In the years leading up to the Paris Convention (1883) till the 1960s, the focus of attention was the Paris Convention for the Protection of Industrial Property and its subsequent amendments in 1900, 1911, 1925, 1934, 1958 and 1967. Since the Paris Convention was avowedly directed to creating import monopolies, for manufacturers and industrialists seeking markets abroad (without requiring them to manufacture in the country sought to be exploited as a market), nations were exhorted to join the Paris Convention in an international spirit of good will and modernity!

Since the early 1960's concerted effort was made by Less Developed Countries (LDC) to re-examine the true basis of this good will. This has led to a re-consideration of these issues through the aegis of the United Nations and UNCTAD. Meanwhile, the campaign for joining the Paris Convention continues.

A much more aggressive initiative has been launched by European, American and Japanese Communities in an important submission made at the Uruguay Round of the General Agreement on Trade and Tariffs (GATT). Supported by the Intellectual Property Committee, (a coalition of 13 major U.S. Corporations) the Union of Industrial and Employers Confederations of Europe and the Japan Federation of Economic Organisations (KEIDANRAN), an overhaul of the law of International Patent System has been proposed to

"eliminate trade distortions caused by infringement of and other misappropriation of intellectual property".

Needless to say, the trade distortions and consequential effects created by the Patent System is not given any real consideration.

A brief note below outlines some of the implications of some of the proposals.

I. FOREIGN INTEREST

- A. The foreign interests for the developed countries are using the forum of GATT negotiations to pressurise developing countries including India to make substantive changes in their existing Patent Laws.
- B. The U.S.A., European and Japanese Business Communities contend that the Intellectual Property Protection available in India and certain countries is inadequate and also in-effective against infringements. Many of these countries in their earlier stages of development either had none or weak patent legislation.
- C. They demand that patentability should cover, without discrimination, any new industrially applicable products and processes.

They want this right to be so provided that others are precluded from manufacture, use or sale of the patented invention and patented process.

They also want :

- 20 years period for Patent life.
- Patent not to be revoked for non - working.
- Where for justified legal, technical or commercial reasons patent is not worked but importation is authorised, the requirements of working of patent should be treated as satisfied.
- Reversal of burden of proof should be provided for against infringements.

In short, exclusive reservation of markets is being demanded for patented products/processes.

II. INDIAN PATENT SYSTEM

- A. The Indian Patent System was developed and enacted after prolonged indepth study when it was found that the Patent Holders were taking too much undue advantage of their superior monopolistic position and charging very high prices to gain enormous profits and keeping in view the needs for faster economic development and growth. Our Patent Laws ensure working of inventions and processes within a reasonable time of 3 years.

- B. Our Patent System excludes certain categories of industrial and other products vital for our economy :
- (i) Drugs & Medicines, Pesticides and Chemical Substances (only processes are patentable)
 - (ii) Atomic energy inventions ; and
 - (iii) Agriculture & Horticulture Products.
- C Provisions of the Act have been designed in a balanced manner to achieve the objective of working of the patents by the Patentee or through Licencees (under Compulsory Licensing or Licensing of Right provisions).

III. INDIAN PATENT SYSTEM - COMPARABLE

Certain provisions, which are being objected to by foreign interests, are not unique in our laws. Such provisions exist in the laws of Switzerland, Japan, USSR, Spain and several other countries. An analysis is given in the attached Statement.

IV. CONSEQUENCES IF THE INDIAN PATENT SYSTEM IS CHANGED

If process patent wherever applicable is changed to product patent; Compulsory Licensing becomes weak and unenforceable ; Term of all the Patents get extended to 20 years, Reversal of burden of proof is conceded etc.,

the consequences will be disastrous to Indian economy in terms of :

- (i) our current research activity, due to our stage of development and size of our businesses is mainly directed to applied/process research. Such research work will stop completely for new products and would be applicable only for patent - expired old products (after a lapse of 20 years).
- (ii) No new product would be introduced by Indian Companies as is happening at present. Licensing of patented products would be a pre-requisite which would be extremely difficult, if not impossible.
- (iii) Dependence on imports (of not only raw materials but also of finished products) would increase to a disproportionately high level and at exorbitant prices.
- (iv) Export activity would receive a major set-back, substantially worsening the balance of payment position further

- (v) Monopolistic regimes will get established and competitive forces would get totally eliminated. Products would be available at unimaginably high prices.

INDIA'S ECONOMY WILL BE VULNERABLE TO THE DESIGNS OF TECHNOLOGICALLY ADVANCED NATIONS.

B.K. KEAYLA
Convenor,
National Working Group
On Patent Laws.

ANALYSIS-PROVISIONS OF INDIAN PATENTS ACT 1970 ARE NOT EXCEPTIONAL

<u>ASPECT</u>	<u>INDIAN PATENTS ACT, 1970</u>	<u>PATENTS ACT OF OTHER COUNTRIES</u>	
I. PRODUCTS EXCLUDED FROM PATENTABILITY	<ul style="list-style-type: none">- Food (Article of nourishment)- Medicine or drug- Substances produced by chemical processes- Method of Agriculture or Horticulture.- Process for Prophylactic or treatment of human beings or animals or plants.- Products for protection of preservation of plants.- Atomic Energy Inventions	<ul style="list-style-type: none">Food ProductsPharmaceutical productsChemical ProductsPlant varieties or kinds of animals or essential processes for obtaining plants or animals.Nuclear Materials, Atomic Energy, Atomic Weapons.	<ul style="list-style-type: none">Australia, China, Canada, Brazil, Japan, Spain, Switzerland, Korea, GDR, Hungary, Poland, USSR & many other countries.Australia, Canada, China, Japan, Spain, Switzerland, GDR, Hungary, Poland, Turkey, Argentina, USSR, Brazil, Pakistan & many other countries.USSR, Brazil, Chile, China, Hungary, Korea, Mexico, GDR, Spain.Austria, China, Canada, Brazil, Denmark, Finland, France, Sweden, Norway, UK, Poland, Switzerland, USSR & many other countries.Japan, USA, China, Czechoslovakia, GDR, Poland, Brazil, Romania.
II. PROCESS PATENT	<ul style="list-style-type: none">- Substances used as food or as medicine or drug (include Insecticide, Weedicides etc., intermediates for producing medicines, insecticides etc.)- Substances produced by Chemical processes.	<ul style="list-style-type: none">Medicinal & Food Products.Chemical Processes & methods.	<ul style="list-style-type: none">Bulgaria, Colombia, GDR, Hungary, Turkey, Romania, Spain, Taiwan, Uruguay, Venezuela, Australia, Mexico, USSR & Canada.Germany, Austria, Brazil, Czechoslovakia, Hungary, Poland, Japan, Mexico, Norway, USSR and Holand

<u>ASPECT</u>	<u>INDIAN PATENT ACT 1970</u>	<u>OTHER COUNTRIES</u>
III. TERM OF THE PATENT	<p>For Food, Drugs and Medicines & Chemical Substances: 7 years from the date of application or 5 years from the date of sealing of patent.</p> <p>For other patentable products 14 years</p>	<p>5 years : For certain products/processes Turkey, Argentina, Chile, China Iran and Venezeula.</p> <p>6 to 10 years : Turkey, Argentina, Chile, China, Columbia, Egypt, Iran, Peru, Venezeula, Yugoslavia, Cuba.</p> <p>11 to 15 years: Italy, Japan, Bulgaria, Czechoslovakia, Romania, USSR, Greece, Portugal, Spain Turkey, Argentina, Brazil, China, Egypt, Iran, Iraq, Korea, Mexico, Sri Lanka, Uruguay, Malaysia, Thailand.</p> <p>16 to 20 years : Spain, Israel, Austria, Canada, GDR, France, Switzerland, U.K., U.S.A., FGR, Hungary, Philippines, Bangladesh Pakistan, Singapore and certain other countries.</p>
IV. Compulsory Licensing	Compulsory licences granted after 3 years if reasonable requirement of public interest not satisfied about availability, reasonable prices.	<p>i) Similar provisions exit in Model Law prepared by BIRPI predecessor of WIPO.</p> <p>ii) Even WIPO Document No.WIPO/IPL/BN/85/4 dt. December 3, 1985 permit similar objectives.</p>

<u>ASPECT</u>	<u>INDIAN PATENT ACT, 1970</u>	<u>OTHER COUNTRIES</u>
		<p>iii) Other countries having similar provisions are: England, Germany, France, Greece, Israel, Switzerland, Czechoslovakia, Hungary, Ireland, Italy, Japan, Luxembourg, Mexico, Newzealand, Finland, Guatemala, Netherland, Pakistan, Philippines, Sweden, USSR, Yugoslavia.</p>
V. LICENSING OF RIGHT	In Public interest, Government may apply after 3 years, for suo moto endorsement.	China, Malaysia, Pakistan, Philippines, Republic of Korea, Singapore, Thailand, Australia, Canada, USA, U.K., France.
VI. LICENCE OF RIGHT FOR MEDICINES, DRUGS OR CHEMICAL SUBSTANCES	Deemed to have been endorsed after 3 years due to non-working.	France (Minister's Orders), Newzealand, Cyprus.
VII. REVOCATION	If first compulsory licence is not worked in 2 years, order for revocation issued within 1 year thereafter.	Australia, Austria, Brazil, Cyprus, Egypt, GDR, Iraq, Ireland, Israel, Italy, Newzealand.
VIII. REVERSAL OF BURDEN OF PROOF	No provision	<p>No Provision (i) Switzerland, Brazil, Czechoslovakia, USSR, Sweden.</p> <p>(ii) Under European Patent Convention.</p>

OCCASIONAL PAPER NO.4

INDIAN PATENTS SYSTEM IS AN IMPORTANT
SUBJECT BEING RAISED AT DIFFERENT FORUM.
GOVERNMENT IS UNDER TREMENDOUS PRESSURE
FROM FOREIGN INTERESTS FOR MAKING
SUBSTANTIVE CHANGES. IT WILL NOT BE IN OUR
NATIONAL INTEREST TO CHANGE ANY PROVISION
OF OUR PATENTS ACT 1970.

THE ATTACHED PRESS CUTTINGS ARE FOR
YOUR SPECIAL ATTENTION PLEASE.

CONVENOR

03103
G-100



Strangulating Indian R & D

by Balraj Mehta

PUBLIC affirmation by the Prime Minister that the import substitution effort in technology has been "one of the biggest mistakes" is ominous. Coming in the midst of mounting pressure and open arm twisting by the developed countries, in particular the USA, via the Uruguay round of GATT negotiations in which, together with trade in services, protection of intellectual property has been inscribed as the most pressing issue on the agenda, the Prime Minister's stand, if not checked and reversed, portends evil times of a grave nature and serious dimensions for Indian research and development (R&D) and technological progress.

Mr Rajiv Gandhi chose to deliver his dictum on the technology policy and its aims in his characteristically hectoring style on the occasion, ironically enough, of presenting the 1987 Shanti Swarup Bhatnagar awards to Indian scientists. It is a pity that the Indian scientists present on the occasion did not have an opportunity to refute his extremely dangerous position on Indian technology and its tasks at the present stage of India's socio-economic development.

But India's scientific community is greatly disturbed at what are tending to be concerted moves of comprador business and political interests in India, foreign multinationals and the governments of the developed countries to derail Indian R&D and strangle the effort for achieving technological self-reliance to break neo-colonial shackles on the country's socio-economic development process.

The Prime Minister's stand on the technology policy and the reasoning behind it are strikingly supportive of the mobilisation of forces by multinational corporations for incorporating a provision for the protection of intellectual property rights under the GATT Charter. This will be a powerful instrument for enforcing what is called the Paris Convention on the protection of patents, designs and trade marks to cover not only industrial property; as originally conceived, but all intellectual property on a much broader basis.

Many developing countries, including India, have refused so far to be a party to the Paris Convention. This is for the very good reason that under the Paris Convention indigenous R&D would have little scope to develop, above all by way of the import substitution route, and help indigenous enterprise to engage in the production of goods and services to satisfy the domestic demand and even find export outlets.

India, after a great deal of tussle with multinational corporations, which own 85 per cent of the patents registered in the world, enacted in 1970 its own patent law. The essence of this law is that it provides a solid and viable basis for the Indian R&D to develop technologies for substituting the import of patented products and prevent their unhindered access to the Indian market. It challenged the monopoly of foreign business interests to import the patented pro-

ducts and gave a boost to the Indian R&D and indigenous business enterprises to undertake domestic production of similar products.

What the Indian patent law of 1970 actually provides for are simple departures from the patent system which the multinational corporations and the developed countries want to sanctify and enforce. It permits not only product patents which alone are allowed under the Paris Convention but also process patents for food, medicines, drugs and chemical substances. Agricultural products and processes for the treatment of human beings or animals are not treated as inventions and are, therefore, not patentable. Atomic energy inventions are also not patentable under the Indian law.

As regards the period for patent protection, the Indian law provides five to seven years for food, medicine, drugs and chemical substances and 14 years for other products. The law, therefore, gives reasonable protection to those who invest brains and money to invent new products and processes. The charge of the multinationals that it encourages imitators and the production of counterfeit goods is totally misplaced.

The real point about the working of the Indian patent law is that it has helped to find substitutes for imported goods and services by R&D in India which has rightly concentrated its efforts not on finding brand new products but on finding new processes for undertaking domestic production to substitute import of goods and services produced abroad. This is due to the compelling fact that discovery of brand new products requires huge resources in skills and money which a developing country lacks. In the first stage of development, a developing country must concentrate available resources to achieve optimal results which come by way of import substitution rather than new products.

By adopting the import substitution route, Indian R&D has derived rich returns not only in terms of foreign exchange savings but also by ensuring for Indian consumers assured supplies and reasonable prices. It has slashed the high monopoly profits foreign goods could earlier extract from the Indian market. This has been most palpable in the case of pharmaceuticals and food products. This also explains the frantic lobbying of international drug firms to drag India into the Paris Convention on patents and recover a profitable market for their products in India.

Before the 1970 Patent Act of India came into force, finished drugs and exotic processed foods were protected for free entry and the consumer was mulcted by their producers abroad in the absence of any competition from domestic producers. This could go on under Paris Convention for as long as 20 years for each product.

After 1970, however, Indian R&D (having

developed cost-effective processes) has helped the manufacture of a large number and range of basic chemicals, drugs and pesticides in India. These products are being sold to the Indian consumer at reasonable prices and even export outlets on a competitive basis — quality wise and price wise — are being found for them.

What the multinational corporations are clamouring for is what they call "effective deterrent to international trade in goods where there is an infringement of intellectual property rights". They are even demanding that for patent protected products, the production of an identical product should be prohibited. To this end, they are demanding that GATT should ensure that national laws and procedures on protection of intellectual property are in conformity with the standard provisions of the Paris Convention. If any country fails to fall in line, the signatories to the intellectual property right provision of GATT should take concerted action against it, including trade discrimination and curbs on financial aid and technology transfers.

What is being demanded, in fact, is that the developing countries, among them India, should join the Paris Convention and the GATT should put in place sanctions to achieve that end.

It is rather disconcerting in this context that with the policy of import liberalisation already hitting hard the domestic production of a variety of goods and services, above all the strategic capital goods and machine-making industries, and the opening of the Indian market for investment and marketing activities of foreign capital generally and multinational corporations in particular, the Government has initiated moves to review and revise the time-tested official policy and position on the Paris Convention on patents also. A committee, in fact, has been already at work since early last year for this purpose.

Meanwhile, there are disturbing indications that the Government has been pushed to the very brink of deciding in favour of joining the Paris Convention on patents within the framework of the GATT provision on the protection of intellectual property. It appears, as it often happens in the management of public affairs under the present political-power dispensation, that only a nod from the Prime Minister is awaited for clinching the issue.

The Prime Minister's tirade against the technology that is geared for import substitution may well be an advance notice that he has been persuaded by the interested quarters and is now ready to order a fall into the gilded trap of the Paris Convention on patents and the GATT provision for protection of intellectual property to strangle the R&D effort and technology self-reliance of India. The deadline for it is said to be mid-December. The scientists and technologists concerned have to bestir themselves immediately and raise strong and united voice of protest to block this disastrous move.

Patents law **Pressure by US**

By R. Nair

INDIA'S scientific establishment as well as senior policy makers are apprehensive that Government leaders may cave in to intense pressure from the United States to change India's patents and licensing laws. Should India succumb to the pressure, they warn, the long-term effects to the nation could be far worse than signing the NPT because of its potential to affect every facet of the economy.

The proposal has met with strong opposition from the Law, Industry and Science Ministries with Minister of State for Science and Technology K. R. Narayanan reportedly addressing a letter to the Prime Minister detailing the various ramifications of succumbing to the US pressure. Informed sources say he has warned that self-reliance and indigenous development of science would be a certain casualty, the effects to be immediately felt in the pharmaceutical industry. Mr Narayanan's letter was preceded by a four-page memorandum to Cabinet Secretary B. G. Deshmukh from Industries Secretary Omka Bordia on similar lines. The latest US proposals under the Science and Technology Initiative, she is reported to have warned, is only another extension of the policy to use cooperation in the field of STI to change our patent laws. If the US demands are to be accommodated, it would call for a mandate to amend patent laws on a 'substantive and fundamental scale.'

Essentially, the problem revolves around process patents and product patents. Indian patent laws permit only process patents for food, medicine, drugs and chemicals. Limited product patents are available for seven and fourteen years duration for various categories while atomic energy and living organisms cannot be patented at all.

US pressure on India to align its patent laws with its own began shortly after Prime Minister Rajiv Gandhi and President Reagan signed an agreement during Mr Gandhi's 1985 visit to Washington to extend for another three years the STI signed in 1982 by Mrs Indira Gandhi with the US President. The Committee of Secretaries met on 22 July 1986 and expressed itself for continuing with the present legislation, pointing out that it might hamper the indigenous development of technology if the patent laws were to be changed. The view was repeated when the Committee met again a few months ago. The PM's Science Advisory Council headed by Dr C. N. R. Rao met in June last year to discuss the issue and concluded that at no time had the Department of Science and Technology complained that our patenting laws were inhibiting access to high technology. Consequently, "nothing should be done to undermine the supremacy of the Patents Act."

When discussions began on ex-

tending the STI for another three-year period from this year, pressure on India began mounting. US Trade Representative Michael Smith met Commerce Secretary A. N. Verma on July 30 and bluntly demanded that India introduce product patents in certain areas. According to minutes of the meeting, Mr Smith made it unambiguous that unless the 'product vs process' issue was resolved to the satisfaction of the US, there would be quick retaliatory action on the trade front. That was followed by a 'Dear Rajiv' letter from Mr Reagan himself that warned that the twice-postponed visit of his Science Adviser, Dr William Graham would not go through, apart from hinting at other sanctions. The letter caused some amount of flutter in the PM's Office and brought the External Affairs Ministry into the picture. A 'Dear Ron' letter was despatched which seemed to be sympathetic to US concerns without making concrete promises. Although senior officers in Industry and Science ministries blame the External Affairs men for diluting the Indian position, their role was apparently limited to seeing the Graham visit come through. Shortly before Dr Graham arrived in Delhi, the US Embassy in Delhi handed over a list of "talking points" that even seemed to hint that India could hold out its assurances quietly. The issue need not figure in the main communique but could be addressed in side letters, the Embassy suggested.

Confusion among the Indian negotiating team caused by pressure from the PM's office to evolve a via media to accommodate the US concerns, has apparently led to India conceding more than it intended to, give away in the first place. A joint statement issued by the two sides on Oct. 5 says "India and the US agree to consider the question of providing for protection and allocation on a mutually agreeable basis of any Intellectual Property Rights arising out of the STI programme."

Analysts point out that one reason why the US is so concerned about enforcing industrial property rights now more than ever is because of fears that its own exports to traditional markets may be squeezed in the future, for instance, as the European Community attempts to liberalise internal trade barriers and create a single market. On a similar tact, the Omnibus Trade Bill passed by the US Congress earlier this year is oriented towards pushing exports and gives the US greater leverage in bilateral negotiations with countries such as India and China, although officials claim that the US would still like to work within the overall framework of GATT. If India now buckles down to the arm-twisting, analysts believe, the loss would be of the entire developing world.

Continued US pressure on India

Patents law may be amended

By Our Special Correspondent

NEW DELHI, Nov. 1.

Patents law may be an arcane subject for most people, but Indo-US diplomacy nearly reached a flashpoint in the last two months on the subject of patents.

Prime Minister Rajiv Gandhi and President Ronald Reagan have exchanged personal letters on the subject; the Indo-US Science and Technology Initiative (STI) nearly got called off in September, as a result of the disagreement; and the US even came close to the unprecedented step of threatening trade sanctions against India.

So far the government of India has refused to buckle under pressure. But some changes in India's patents law, to overcome any specific legal deficiencies that are pointed out, are not ruled out.

The US offensive is part of its global initiative on the subject of intellectual property rights. In the Indian context, it has mounted an attack on three fronts:

*In the course of negotiating the

extension of the Science and Technology Initiative (STI), first launched when Mrs. Gandhi visited the US in 1982 and then renewed for three years in 1985;

*At the Uruguay Round negotiations of the General Agreement on Tariffs and Trade (GATT), which are due for review soon at Montreal;

*And through pressure to sign the controversial Paris Convention on patents, which is overseen by the World Intellectual Property Organisation (WIPO).

Indo-US discussion on the overall subject of intellectual property rights dates back to Mr. Rajiv Gandhi's visit to the US in 1985. At that time the US administration underlined its concern about the fact that under Indian patents law, only processes were covered in key areas like pharmaceuticals and chemicals, and not products. Among other issues that have figured in discussions on India's patents law is the period for which patent protection is available.

Till last month, the most active

pressure was during the negotiations for extending STI for a fresh three-year term. Dr. William Graham, science adviser to President Reagan and the US negotiator on the STI renewal, postponed his visit to India thrice in what were seen as pressure tactics. And in July, at a meeting between a US trade representative and commerce secretary A. N. Verma, the prospect of trade sanctions was held out indirectly, through a reference to such action against Brazil (which has no patents law).

When this too failed to yield results, President Reagan wrote a "Dear Rajiv" letter which seemed to suggest that unless the US stand on patents was accommodated, the STI was doomed. The letter also talked about the benefits of the hi-tech that the US was willing to offer.

Rajiv's "Dear Ron" response was instant, and reflected the unanimous view that had developed on the subject within the Indian government.

As far back as July 1986, the committee of secretaries had concluded after

due deliberations that signing the Paris Convention might jeopardise the indigenous development of technology. Last year, the Science Advisory Council to the Prime Minister in turn concluded that nothing ought to be done to undermine the supremacy of the Indian patents law, and pointed out that at no time had the department of science and technology (DST) held that the Indian stand on this issue had prevented access to high technology from abroad.

At the height of the STI imbroglio, the law ministry declared that patent protection could not be a matter of discussion between two sovereign nations. And the DST held that there was no need for any significant changes in the existing law.

The industry ministry (which is the nodal ministry for patents) put its view down in a detailed note which talked of the conceptual and philosophical differences between the Indian and US patent laws.

The committee of secretaries met

Continued on page 4, col. 7

Patents law

Continued from page 1, col. 4

again and reiterated its earlier stand, as did Mr. K. R. Narayanan, minister of state for science and technology, who pointed out that any change in India's position would damage the domestic technological development of the pharmaceutical industry.

The Indian pharmaceutical industry has been in the forefront of the fight to keep the Indian patent law unchanged, even as the US drug industry mounts pressure on the US administration.

At one stage the US government tried to ease its way through the STI dispute by suggesting that rather than take a public stand on the subject, India could deal with it outside the main communiqué on the STI renewal.

But India refused to budge on its basic stand. And early last month, STI was finally renewed. Nevertheless, the joint communiqué, issued after STI was renewed for a further three years stated in ambiguous terms: "India and the United States agree to consider the quality of providing for protection and allocation on a mutually agreeable basis on any intellectual property rights arising out of the STI."

Indian officials argue that they have scored a clear victory on the STI issue, and that the intense US pressure was successfully fought off. But they also recognise that the US is not about to forget the issue, and that pressure will be mounted afresh in other forums. US diplomats in turn say that they see the task of changing India's stand on the issue as a long-term process.

The issue has already been joined in GATT, where India has argued that property rights cannot be discussed as it is not a trade-related issue. India and Brazil have been leading the fight on this issue in GATT, with a third ally now being Thailand. This could become another major issue for the developing countries, along the lines that the issue of trade in services became. On that issue too, it was India and Brazil which fought a determined US offensive before a compromise was eventually worked out.

Before STI and GATT, the main pressure on India had been for signing the Paris Convention. Now this has become a relative sideshow, with the US de-emphasising the issue in favour of pressing the issue on GATT.

Nevertheless, a seminar is due to take place later this month in New Delhi, organised jointly by WIPO and the Federation of Indian Chambers of Commerce and Industry (FICCI). A counter-seminar will be held around the same time by the newly formed National Working Group on Patent Laws.

SATURDAY, OCTOBER 22, 1983.

Patents: India under pressure from US

By R. SASANKAN
Express News Service

NEW DELHI, Oct 21

The Government is split over the question of amending the controversial Patents Act on the lines suggested by the US Administration.

A committee of secretaries in the third week of August this year, decided against amending the Act. But now some of the senior officials of the ministries concerned have changed their views. Even within the same ministry officials hold different

The Ministry of Industry has all along been opposing any amendment to the Patents Act. In fact, it sent in its views in writing to the cabinet secretary a few months ago. But a very senior official of the ministry now feels that "something should be done" to meet the US demand. Similar thoughts have emerged in other ministries as well.

The Indian Patent Act permits only process patents for food, medi-

cine, drugs and chemicals. This enables the Indian companies to produce any item in the international market by modifying the process. The US Administration is asking for introduction of product patents in all fields to prevent what it calls "international thievery". The US also wants a 20-year duration for the patents.

The US Administration is putting tremendous pressure on the Government to amend the Patents Act to protect its intellectual property rights. US embassy sources when contacted, told ENS that the Indian Government had not yet agreed to amend the Act, but it "seems to agree that this is a serious problem". They said there could be trade sanctions if India is identified as one of those countries which provide the least protection to US intellectual property rights. Asked whether India had already been identified as one such country, the sources said the process of identification was on and

the first list would be ready by May 1989.

The India scientific community, by and large, remains committed to the present Patents Act and feels that it should not be amended. It claims the support of Mr Sam Pitroda, the Prime Minister's technology adviser. (Mr Pitroda could not be contacted as he was out of Delhi).

The Science Advisory Council to the Prime Minister, headed by Prof C.N.R. Rao, director, Indian Institute of Science, has told the Government that "nothing should be done to undermine the supremacy of the Indian Patents Act". On the question of India joining the Paris Convention on intellectual property rights, the council said, "There is no need at the present juncture to join it before certain detailed studies are completed".

The Indian industry is also split over the issue. While industries in the pharmaceutical, chemical and food sectors oppose any amendment to the

Patents Act, some large industrial houses which have foreign collaborations feel that the Act could be amended. These are mostly members of FICCI.

Industries in the pharmaceutical and chemical sectors are panicky. They, along with a number of other organisations have formed a national working group on patent laws under the chairmanship of Dr Nityanand, former director, Central Drugs Research Institute. The working group plans a national campaign to make people aware of damages that could be caused if the Government decides to amend the Act on the lines suggested by the US Government.

The scientific community feels that the Indian Government has already given in to the US demand by making the issue a bilateral one. The joint statement issued by the two countries on October 5 after extending the Gandhi-Reagan Science and Tech-

Continued on Page 4 Column 2

Patents: India under pressure

Continued from Page 1 Column 8

nology Initiative says that "India and the United States agree to consider the question of providing for protection and allocation on a mutually agreeable basis of any intellectual property rights arising out of the STI programme".

A US delegation is expected here in November-December to discuss the question of intellectual property rights in areas falling within the STI programme. The outcome of the discussions can have broader implications.

An executive order issued by the US President in April last year says that the US Government should have international science and technology agreements only with those countries which have policies to protect the US intellectual property rights.

The United States is not keen on India joining the Paris Convention on intellectual property. It wants the Indian Patents Act to be amended on certain lines to protect its intellectual

property rights.

The Indian patent system excludes certain vital products such as agricultural products. But the US wants agricultural products to be included in the patent system. The present Act allows the Government to force production of a patent failing which it can give the patent to other companies. The US wants this provision to be scrapped.

Those who oppose any change in the Patents Act feel that faster industrialisation had been possible due to the pragmatic provisions of the Act. In particular, it has helped the country to produce chemical-based products, pharmaceuticals, and agrochemicals at comparatively cheaper prices.

Their contention is that the process of industrialisation will be hampered if India amends the Patent Act or joins the Paris Convention. The growth of the national sector of the industry will be set back by 10-15 years as foreign patent holders will

not licence their patented products to them. Large-scale litigation will be initiated by foreign patent-holders against the process developed by the national companies. Drug prices would go up and drug exports, currently around Rs 300 crores and growing at the rate of 40 per cent per annum, will be adversely affected as exports to countries who are members of the Paris Convention will be stalled, they contend.

The Omnibus Trade and Competitiveness Act 1988, passed by the US Government, requires the US trade representatives to identify countries that deny protection for US patents and copyrights. It is now clear that the US administration is holding out the threat of trade sanctions to force India to amend the Patents Act.

US officials are on record as saying that the Indian Patents Act does not protect the US intellectual property rights. They forced Brazil to do it by cutting down imports of coffee from that country.

India and Paris Convention

Govt may succumb to pressure

By R. SASANKAN
Express News Service

NEW DELHI, July 24

The Indian Government is under renewed pressure from industrialised countries and the World Intellectual Property Organisation (WIPO), a UN affiliate, to join the Paris Convention on patent law.

There is a fear among Indian industry and the scientific community that the Rajiv Gandhi Government, in its anxiety to obtain the latest technology, may agree to join the Paris Convention. The industrialised countries, particularly the United States, have been insisting that transfer of sophisticated technology to India will not be possible unless India honours the rules regarding intellectual property rights.

The Scientific Advisory Council to the Prime Minister is understood to be the latest body to oppose the proposal to join the Paris Convention. Officially, there is no indication as yet that the Government has relented in its opposition to the Paris Convention. However, there is a feeling among Indian scientists that Mr Sam Pitroda, Prime Minister's technology adviser who had himself patented a few electronics products in the US, may be able to influence the Government when the issue comes up for discussion in coming months.

Mr Pitroda, contacted by this correspondent, said he had not yet been consulted on the issue. He said there were some discussions at the Government level about three months ago

but he was not aware of any decision. He declined to give his views on the subject saying he would reserve them for the Government.

The Paris Convention on Industrial Property 1883 provides for effective protection to patented products. The Indian Patent Act, 1970, protects only process patent, and not product patent in pharmaceutical and chemical industries. This enables Indian companies to manufacture any product by developing their own processes. For instance, Glaxo, a leading pharmaceutical company, introduced into Indian market Rantidine, an anti-ulcer product about three years ago. This is now being manufactured by a number of Indian companies through their own processes.

The Paris Convention has 97 members. According to Indian industry, the most retrograde provision in the Convention is the Right of Priority. This article provides that if a company registers a patent on a particular day, that date will be the priority date for all member countries. Put differently, any subsequent registration can be invalidated through the Right of Priority by the original patentee. This will enable the patentee to enjoy a monopoly in the market.

The Indian Patent Act, it is claimed, strikes a balance between the interests of the inventor and those of the consumer to ensure that the benefits of new technological development reach the consumer as fast as possible. It also provides for compulsory licensing. Three years from the date of sealing of a patent,

anyone can apply to the controller, alleging that the reasonable requirement of public interest had not been satisfied and that the product was not available at reasonable price. The controller, if satisfied, can order the patentee to grant a licence. The controller can also revoke the patent on the ground of public interest if the patent is not worked within two years of endorsement of compulsory licence.

Once a country joins the Paris Convention, it will not be able come out of it before six years. Of the 97 members, only 77 members had signed the latest convention, that is the Stockholm Convention of 1967. Of the remaining 20 members, nine have signed the Lisbon Convention, 1958, nine the London Convention of 1934 and two the Hague Convention of 1925. There are as many as 62 members who belong to developing countries most of whom had no industrial base when they joined the Paris Convention.

According to the latest estimate, as many as 37 countries are without any industrial base. Furthermore, there are 22 members who are signatories to the Convention but their domestic laws provide that drugs and pharmaceutical products are non-patentable. If India joins the convention it will have to extend these rights to all members without the matching reciprocity.

The Indian subsidiaries of multinational corporations, particularly the drug companies, have been pleading that India should join the

Paris Convention. But the Indian drug sector has been vehemently opposing it. Its argument is that the process patent has already helped the national drug and pharmaceutical sector to develop technologies of a large number of basic drugs and produce them on commercial scale and at competitive prices. In fact, many Indian companies export a number of bulk drugs to developing and developed countries. Some of these products have been patented elsewhere by multinational companies who are members of the Paris Convention.

It is pointed out that if India decides to join the Paris Convention it will have to modify its present Patent Act. According to the Paris Convention, the protection of intellectual property and rights of the patentees have supremacy over the interests of any country or its people. Legal opinion in India too has been opposed to India joining the Convention.

The country's leading scientists have also warned the Government that joining the Paris Convention would cripple research and development not only in drug industry but also in bio-technology.

The Government is expected to take up the issue after the forthcoming seminar on Patent Law and Paris Convention jointly being sponsored by FICCI, the International Chamber of Commerce and WIPO. It is scheduled to be held in Delhi in November.

NATIONAL WORKING GROUP ON PATENT LAWS

OBJECTIVES

To discuss issues relevant and related to the Patent Laws and Paris Convention ;

To arrange for research and publication of papers relating to these issues ;

To help create a better understanding of these issues by organising meetings, seminars and public debates ;

To represent to the Government and those concerned with the formulation of policy on agreed views of the Group ;

Publicise and organise publicity ;

in respect of India's and international patent and related laws and policies.

To forge a National Alliance of various Organisations/Forum/Associations, etc. to work towards and campaign for patent laws and policy best suited for India's interests.