

Centre to curb evergreening of patents in amended Bill

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In a last ditch attempt to ensure passage of the Patents Bill 2005, the government has decided to introduce major amendments to it and at the same time meet the Trips (trade-related intellectual property rights) obligation to introduce product patenting in pharma, agrochem and food sectors.

As per the amendments readied by the commerce and industry ministry, scope of patentability has been expressly restricted by ex-

LEFT-LEANING RIGHT MOVES

- ▶ Existing manufacturers of likely Mailbox patent drugs can continue production under reasonable royalty
- ▶ Scope of patentability restricted by re-definition to check evergreening
- ▶ Para 6 exports to LDCs made easier; exports to be allowed under CL to curb anti-competitive practices
- ▶ Patenting of software embedded with hardware dropped
- ▶ Pre-grant "representation" replaced with stronger pre-and post-grant opposition
- ▶ Pharma invention means any new entity involving one or more inventive steps

pounding Trips-mandated terms namely "inventive step" and "new invention". A patentable pharmaceutical

substance will now be "any new entity involving one or more inventive steps (as re-defined)". Also, in what could al-

lay the domestic fears of evergreening of patents, it has been made clear that new use of a previously known entity will not qualify for patents.

Domestic drug companies can rejoice for another reason too. Those already manufacturing drugs that may be patented under the Mailbox facility for 1995-2005 inventions would be allowed to continue doing so on payment of "reasonable" royalty to the (to-be) patent-holder. No infringement proceedings can be initiated by the patent-holder against these generic producers for

such manufacture. As per the December patent ordinance, the generic producers were required to stop production from the date of patent grant, even though it was said they could not be sued for infringement with retrospective effect from the date of filing/publication of the patent plea.

In addition, patenting of software embedded with hardware, introduced in the Ordinance, has been dropped. Left parties had objected to software patenting on the
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