

# **Indian Patents Law Towards TRIPS Compliance**

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# Indian Patents Law – towards TRIPS Compliance

- India did not provide product patents for ‘food’, ‘drug’ and ‘medicine’ at the time of joining the WTO in January 1995
- India has time till December 31, 2004 to make the national patents law fully TRIPS Compliant
- Currently India provides for a transitional protection namely ‘Exclusive Marketing Rights’ (EMRs)
- A Bill seeking to amend the patents law to make it fully compliant with the TRIPS obligations is currently pending before the Indian Parliament

# The highlights of the latest amendments in the patents law

- Product patent for all categories of inventions – including pharmaceuticals
- Term of patent increased to 20 years
- Microorganisms and microbiological processes patentable
- All EMRs will continue to be valid for the remaining term
- All EMR applications will be considered as Requests for Examination
- Compulsory Licensing provisions strengthened
- Grounds for invoking compulsory licensing include:
  - Public Interests
  - Government Security
  - Price of the product
  - Availability of the product
  - Local working
- Provision to give effect to Para. 8 of the Doha Declaration and Public Health

# Highlights of the Procedural Amendments

- Filing Fee has been reduced
- Forms have been amended – For PCT National Phase Applications Form 1A applies
- Request for Examination Mandatory (within 48 months from the date of filing)
- All Patent Applications will be published after 18 months from the date of priority
- The time limit to file reply to the first office action is reduced to 12 months from 15+3 months
- Time limit to restore a lapsed patent (lapsed due to non-payment of annuity) has been extended from 12 months to 18 months

The coverage of subject matters excluded from the scope of patentability has been expanded:

**The following subject matters, *inter alia* are not patentable:**

- Plants or animals in whole or part thereof;
- Seeds, varieties and species;
- Essentially biological processes for production or propagation of plants or animals
- Mathematical methods, business methods, algorithms and computer program per se;
- Literary, dramatic, artistic work or any other aesthetic creation;
- Methods of playing a mental act or method of playing games;
- A presentation of information;
- Topography of IC Chips;
- Invention which in effect is traditional knowledge.

# Patent System Getting Streamlined

- The Indian Patent System is getting streamlined
- The Patent Offices have been fully automated
- 350 new Patent Examiners have joined
- A Training Institute has been set up in Nagpur at the Patent Information Bureau
- The backlog of pending patent application will be cleared soon
- An Intellectual Property Appellate Tribunal has been set up. The IP Appellate Tribunal will hear appeal from the decision of the Controller of Patents
- The Institute of Microbial Technology, Chandigarh has been designated as an International Depository Authority under the Budapest Treaty

# Concluding Remarks

- **The Indian Patent System has geared up to provide a level playing ground for all stake holders**
- **The recent amendments have brought the national IP Laws close to the TRIPS norms**
- **The 40 years old system of limited term process patents for pharmaceutical products is getting abolished**
- **Multinational Pharmaceutical Companies are looking at the Indian market more seriously - For Indian companies there are challenges ahead**
- **The number of foreign patent filings in pharma is expected to increase considerably after January 1, 2005**

# Thank you