

# REBOOTING INDIAN PATENT SYSTEM ON “RATIONALIZATION” MODE

This is a Series of Presentations Made in the  
Europe in the year 2004

# India – Profile

Largest Democracy in the world

Second largest consumer market

1 Billion People

Large English speaking population

IT Super Power

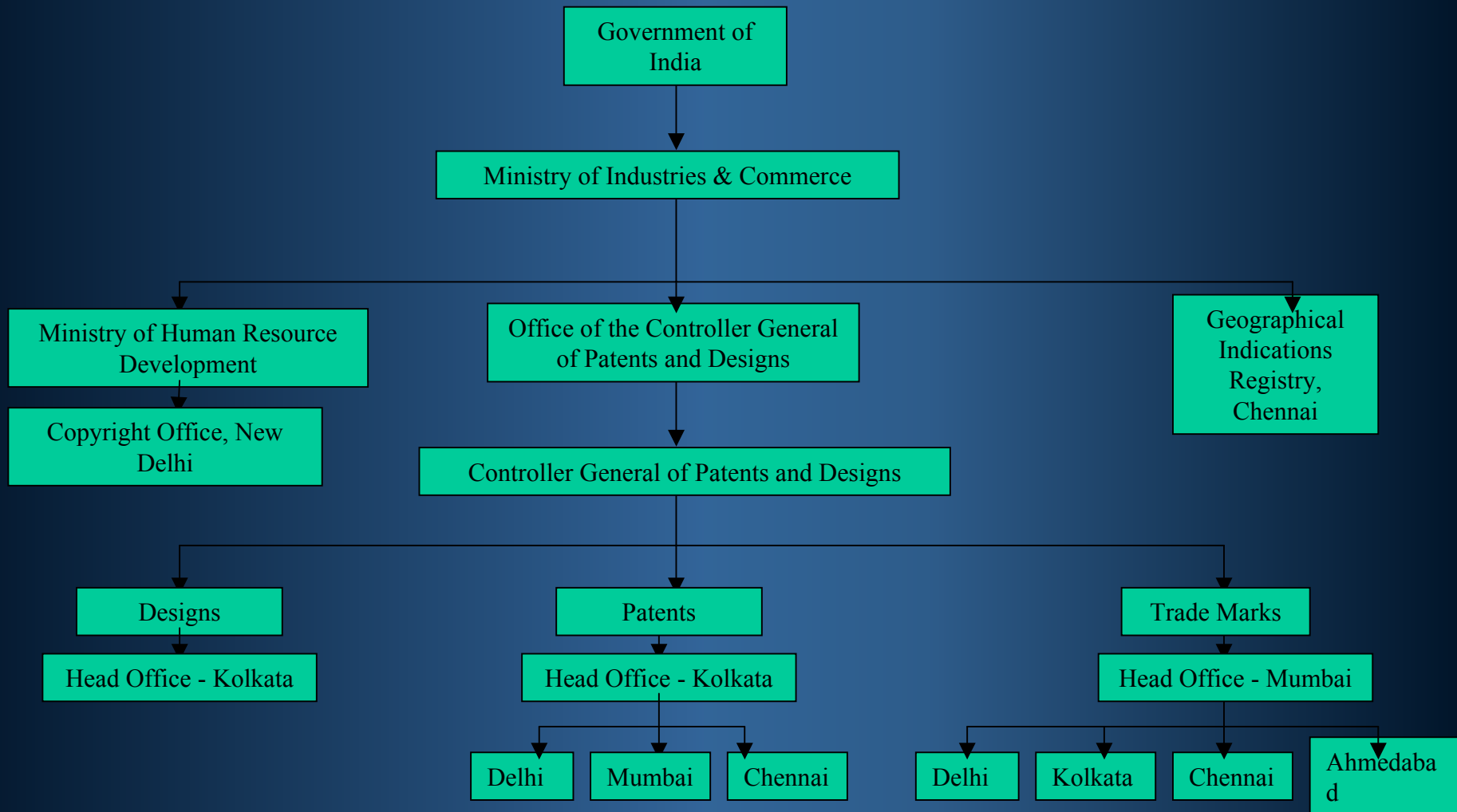
Emerging Bio-tech industry

GDP Rupees 22.78trn (2001/02)

GDP growth 5.4% (1997/98- 2001/02)



# Indian IP Administration System

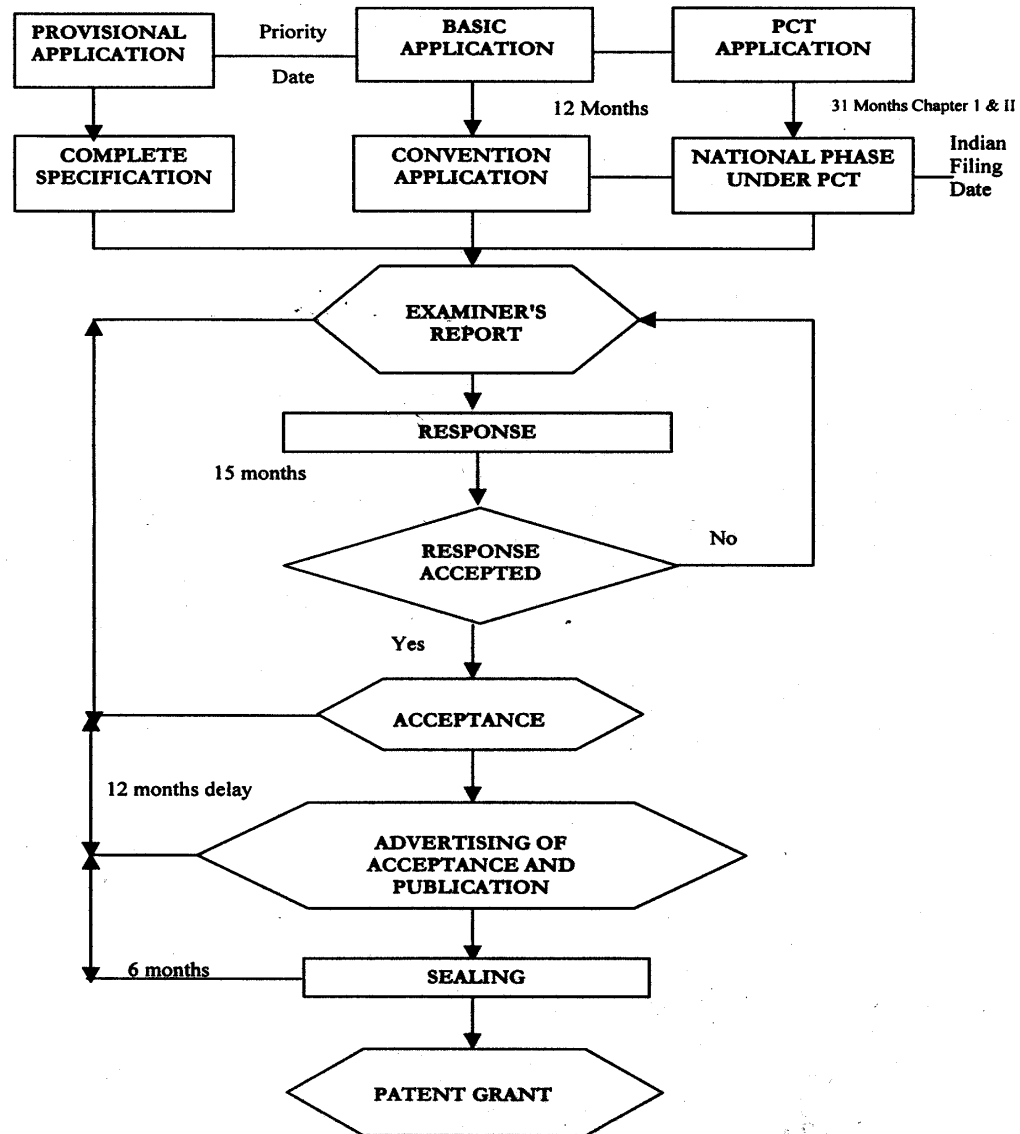


# The Statutory Framework

- ◆ Intellectual Property is a federal subject (subject matter coming under the legislative competence of the Union of India)
- ◆ Consequently all IP Related laws are federal laws
- ◆ The Main Legislations and Subordinate Legislations are:
  - The Patents Act, 1970
    - The Patents Rules 1972
  - The Trade Marks Act, 1958
    - The Trade Marks Rules, 1959
  - The Designs Act, 2000
    - The Design Rules, 2001
  - The Copyright Act, 1957
    - The Copyright Rules, 1958
  - The Geographical Indications Act, 1999
    - The GI Rules (yet to take effect)
  - The Semiconductor Integrated Circuits Lay Out-Design Act, 2000
    - The Semiconductor Integrated Circuits Lay Out-Design Rules, 2000 (yet to take effect)



**PATENT FLOW CHART- INDIA**  
**PARIS CONVENTION**  
**PCT**



The Biological Diversity Act is an important law having direct bearing on biotech researches. If an invention discloses a biological material, the Applicant is under an obligation to inform the Controller of Patents of the source and origin of the biological material. Prior permission from the National Biological Diversity Authority is required to obtain patents in such cases..



Biological Diversity Act

Protection of Plant Varieties and Farmer's Rights (yet to become an Act)

# Major Amendments in the Indian Patents Law

**The Indian Patents Act is amended with effect from May 20, 2003**

“Invention” has been redefined to mean:

“a new product or process involving an inventive step and capable of industrial application”.

The new definition is in conformity with Art.27 of the TRIPS

Agreement. This definition considerably broadens the meaning and content of “invention” for purposes of ascertaining patentability”

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.

## Definition of “Medicine or Drug” has been amended.

– “Medicine or Drug” includes :

- All medicines for internal or external use of human beings or animals
- All substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of diseases in humans of
- All substances intended to be used in the maintenance of public health, or the prevention or control of any epidemic disease among human beings or animals
- Insecticides, germicides, fungicides, weedicides and all other substances intended to be used for the protection or preservation of plants
- All chemical substances which are ordinarily used as intermediates in the preparation or manufacture of any of the medicines or substances above referred.

# Pharmaceutical Chemical Agricultural Chemical Related Inventions

- ◆ The expanded definition of “Medicines or Drugs” has direct bearing on the patentability of inventions claiming “medicine” or “drug”.
- ◆ The definition of “medicines” or “Drugs” must be read in the light of the currently available limited term patent protection or Exclusive Marketing Rights
- ◆ Pharmaceutical Companies are not keen to avail the transitional protection because of the stringent eligibility criteria to get EMRs
- ◆ Currently product patent applications for medicines and drugs go to the Mail Box which will be open only after 31 December 2004.
- ◆ The new amendment makes it clear that the limited term patent protection until January 1, 2005 and the compulsory licensing provisions will apply to agri-chemicals as well

# Unity of Invention

- ◆ The new law provides for the concept of single inventive concept.
- ◆ The Indian Patent Office may now permit Multiple independent claims addressed at aspects of the inventions coming under the coverage of a single inventive concept

## Industry friendly Amendments

- ◆ Term of Patent extended from 14 years to 20 years
- ◆ The burden of proof shifted to the defendants in suits for infringement

# 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

# 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 Centre for Cellular and Molecular Biology (CCMB) at Hyderabad will be acting as one of the main Depository Authorities for the disclosure of biological materials (microorganisms)

# Concluding Remarks

- ◆ Indeed the Indian Patent System is getting rebooted.. On a rationalization mode
- ◆ The recent amendments have brought the national IP Laws close to the international norms contained in the TRIPS Agreement
- ◆ The almost 40 years old system of **limited term process patent protection for pharma/drug inventions** is getting abolished
- ◆ Indian Pharmaceutical Companies realize that it is high time to take patent seriously
- ◆ The number of overseas originating patent applications in the pharma/drug sector is expected to increase after January 1, 2005.