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# Role of Intellectual Property Right in Context of Pharma Industry

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## ABSTRACT

*The concept the role of intellectual property law in pharma industry, this research paper covers the role of the intellectual property law and what is the basic essence of patents, role of pharma and the development of the intellectual property law, how the emergence has been changed from the past years of the technological point of view ensuring that how India used the method of reverse engineering and ensuring the development of the industry in that accordance.*

## I. INTRODUCTION

The concept intellectual property right refers to something which is considered as a creation of mind and that is need to be protected , that is why it is important to understand that intellectual property right basically a creation of a human intellect leading to creating a monopoly over the same , as a result it is important to understand that creation and protection should be done for any creation created otherwise monopolistic right can not be available to person who is drafting.

The Intellectual property rights are divided as per the intellectual works of the person; it includes the various branches as- patent law, copyright law, trademark, Geographical indication, integration of semiconductors, Designs, plant variety Act And Biodiversity. The true essence of the intellectual property is intangible in nature but they returned from intangible property to tangible property in order to give effect for the purpose for which they are created and also to get the economic benefits out of such creation. The intellectual property right aims to protect the creation of intellect in compliance with the Trips agreement as Indian being a signatory member of the TRIPS. The Agreement Trade Related Aspect of Intellectual property (TRIPS) is an international agreement created between the members of the World Trade Organization (WTO). The TRIPS was negotiated in the Uruguay Round of the General agreement on tariff and trade (GATT). Initially the trade agreements were done through bilateral agreements between two nations which then lead to Most Favored National policy and National treatment, but with the advent of the trade at international arenas let to the creation of Multilateral agreement or treaties

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such as TRIPS, WIPO, GATT, WTO, and many others.

## **II. INTRODUCTION TO THE PHARMA INDUSTRY AND EMERGENCE OF INDIAN PATENTS**

The concept of Pharma industry refers to the development of the medicinal industry but its emergence took place late after years, as a result it is important to understand that the existence of this field in India, was not all an easy way out, when the global crises hit the country in mid 17 and 18 century, then the development of medicines where not there, it has to be taken up by the different countries, as a result it requires the proper import and export rules and regulations to be followed just to take away the medicines, as a result in the field of allopathy just to meet the demands of the people it automatically paved the way for the development of medicines but its process was developed seeing the end result that is the medicines.

However this led to the development and introduction to one of the important fields of IPR rights that is patents.

Patents is a right given to the inventor over his invention and process developed by him given by a statutory authority for a definite period of time.

The prerequisites to the concept of patents are following

1. The invention or process should be new and has inventive step.
2. The invention or process should not be already there in public domain
3. The marketability of the invention or a process should be there
4. Technological advancement of the invention or process should be there

**As per the Indian patent act the invention which is registered under section 2 (m) of the Indian patent act would be registered.**

## **III. HISTORICAL BACKGROUND OF THE PATENTS**

The history of Patent law in India starts from 1911 when the Indian Patents and Designs Act, 1911 was enacted. The Patents Act, 1970 is the legislation that till date governs patents in India. It first came into force in 1972. The Office of the Controller General of Patents, Designs and TradeMarks or CGPDTM is the body responsible for the Indian Patent Act. The Patent Office has its headquarters in Calcutta and has branches in New Delhi, Chennai and Mumbai. The office of the CGPDTM is based in Mumbai. Nagpur hosts the office of the Patent Information System and also the National Institute for Intellectual Property Management. The Controller General supervises the Act's administration and also offers advice to the government on related matters. The Patents Act has been repeatedly amended in 1999, 2002, 2005, 2006 respectively.

These amendments were required to make the Patents Act TRIPS compliant. TRIPS stands for Trade-Related Aspects of Intellectual Property Rights. The major amendment in the Patent Act was in 2005, when product patents were extended to all fields of technology like food, drugs, chemicals and microorganisms. The Rules under Patent Act were also amended in 2012, 2013, 2014.

The establishment of rules and regulations in patents played an important role so as to ensure the protection given to the inventor over his invention or process invented by him as per the essentials required for the registration of the patent .

#### **(A) Rights granted by a Patent**

1. If the patent is for a process, then the patentee has the right to prevent others from using the process, using the product directly obtained by the process, offering for sale, selling or importing the product in India directly obtained by the process.
2. If the grant of the patent is for a product, then the patentee has a right to prevent others from making, using, offering for sale, selling or importing the patented product in India.

#### **(B) Term of Patent**

The term of every patent in India is 20 years from the date of filing the patent application, irrespective of whether it is filed with provisional or complete specification. However, in case of applications filed under the Patent Cooperation Treaty (PCT), the term of 20 years begins from the international filing date

### **IV. EXCEPTION FOR THE AN INVENTIONS NOT BE PATENTED**

Subject to section 3 and section 4 of the Indian Patent Act, it states that whatever mentioned in these sections cannot lead to the patent over the invention, it is important to understand that something which is already existing and is there in public domain or is based on atomic energy will not amount to the development of the invention in Indian Patent Act .

### **V. ROLE OF THE PHARMA INDUSTRY IN INDIAN CONTEXT**

Since the role of the pharma industry itself is crucial for the development, however it was getting difficult to provide the medicines to the people suffering from chronic diseases as a result, leading to the haphazard situation for the country as the prices for the medicines were too high and supply was too short, creating a situation affecting the population of the country as a whole, however it is important to understand that our country has a rich source of Ayurveda leading to heal many diseases, soon after the crises, the concept of reverse engineering was used stating that the focus was on the by-product and the means was to reach to the process

it was made , and this how the global crises was been survived by the people of the country.

The importance of pharma industry paved the way for the indian patents act protecting the developments , invention and process if all the essentials criteria is been fulfilled .

This is how the journey of patents came into existence as during that time it was actually a need to protect the rights of the people who tended to utilize their intellect just to safeguard the monopolistic rights .

## **VI. WHY PHARMA INDUSTRY IS IMPORTANT?**

1. **Development of new treatments:** The pharmaceutical companies tend to focus on the development of the new medicines. Treatments and advancement of the new methods to increase the life expectancy ratio of the human beings , as it actually depends country to country and the advancement in the field of science and technologies , however technological advancement is quite helpful for overall development of the human being.
2. **The industry strives to eradicate and eliminate diseases:** The new advancement and development of the pharma industry leads to the eradication of diseases under the guidelines of the world health organization.
3. **Reduced pain and suffering:** Although many pharmaceuticals do directly cure conditions, they can also be used to manage pain, symptoms or side-effects of other treatments, helping to relieve discomfort. A study by the WHO showed that individuals who live with persistent pain are four times more likely to suffer from depression, anxiety and twice as more likely to have difficulty working than those who do not suffer with pain. By providing treatments to manage pain, symptoms and side-effects, pharmaceutical companies can improve patients' quality of life, allowing them the freedom to live healthier and more fulfilled lives.
4. **The industry employs millions of people:** Pharmaceutical companies are responsible for millions of jobs across the world. In the US, the biopharmaceutical industry employs over 800,000 professionals who work across a wide range of areas including scientific research, technical support and manufacturing. It is estimated that in the US, the industry directly and indirectly supports around 4.7 million jobs. Pharmaceutical companies require highly skilled and educated professionals, with roles for administrative level up to and including Ph.D. scientists.

## **VII. CONCEPT OF THE LICENSING IN THE HEALTH CRISES**

**COMPULSORY LICENSING :** it is important to understand the role and development of the

pharma industry , and recent development , since the development of this field is so to extent in the patents leading to the compulsory licensing concept , which refers to the development of the patents stating that where a statutory authority itself tends to state that it can be used by the people when it is for the public use and an hour a need then it has to be shared with the people itself but via the concept of licensing where the royalty is been given on the behalf of the usage of the invention or the process which compulsory license for as it basically for the public health development .

**VOLUNTARY LICENSING :** It refers to that kind of situation stating that the inventor himself tends to be given a license for a certain period of time , usage depends upon the terms and conditions taken by the parties .

The pharma industry not only helps in ensuring the development of the country it also helps in protecting the rights of the inventor when the human intellectual is protected as the patents act ensuring that there shall not be an inadequate usage of the process or invention that is being considered, specially during the covid duration it becomes important to understand that role of the patents came into existence just to protect the human rights of development as the IPR rules however this situation hit all of us in that accord where it becomes necessary to focus on the protection and health of the citizens of the nation itself.

Thus , it is important that when a protection should be taken to enjoy the rights given to them and to ensure that there has been a proper development as an whole ensuring the registration of patent by the means of which kind permission itself,

That is why registration is compulsory in this form of patent in order to enjoy the rights that patent is given to ensure the complete development for the same.

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