

Carlos Correa accuses Mashelkar for misinterpreting his quotes in revised report

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The world renowned patent expert Carlos Correa, whose views have been widely quoted by the Mashelkar Committee to support its conclusions in the revised report, has come out in the open and complained that some of the quotes from his published article titled "Integrating Public Health Concerns into Patent Legislation in Developing Countries" have been misinterpreted by the Mashelkar Committee. This is for the first time since the issue courted controversy some time back that the internationally famous patent expert has come out in the open to criticise the Mashelkar Committee for misinterpreting his quotes to establish its conclusions in the revised report that under the WTO's TRIPS agreement, India will not have the right to limit the granting of patents for pharmaceutical substances to strictly new medicines.

"TEG (technical expert group headed by Dr RA Mashelkar) refers to was in the context of whether it would be TRIPS-compliant for some countries to continue to exclude all pharmaceutical inventions altogether or a set of them, such as essential medicines. I concluded that it would not be compatible for countries that did not recognize product patent protection for pharmaceuticals, such as India, to continue to exclude them once the TRIPS agreement was fully implemented in these countries," Correa said.

This, of course, is a very different question than the TEG was apparently asked to answer. To my understanding, the relevant question before the TEG was:

"Whether it would be TRIPS compatible to limit the grant of patent for pharmaceutical substance to new chemical entity or to new medical entity involving one or more inventive steps." This is a completely different question from whether it would be TRIPS compliant to exclude pharmaceutical products from patentability altogether, he said.

The government had set up a technical expert group (TEG) with Dr R A Mashelkar as its chairman and four other members, on April 5, 2005 on the twin issues of 'evergreening of patents' and 'excluding micro-organism from patentability'. It submitted the report to the government on December 29, 2006. There was strong criticism of the report by public interest groups and others on the ground that important parts of it were plagiarized from a submission before the TEG by the representatives of MNCs. The criticism was so strong that Dr Mashelkar resigned as chairman. However, the government persuaded him to re-examine the issues and submit a revised report.

The TEG had recently submitted its revised report to the government and the government accepted the report. But, the redrafted report has also run into rough weather due to the disclosures by Carlos Correa.

"In my opinion, the approach taken by the TEG - to treat the issue as a binary, yes or no situation - overlooks an array of interesting, complicated and critically important issues relevant especially to the Indian situation. A significant portion of my scholarship since (and including) the 2000 South Centre paper that the TEG quotes, has been dedicated to the many options available to developing countries under the TRIPS agreement to limit the grant of a large number of 'secondary' patents that pharmaceutical companies routinely apply for and use to unduly delay the entry of affordably priced generic medicines," Correa added.

"The TEG had, in my view, the opportunity to explore the various means available to India (and other developing countries) to limit the grant of patents that only cover minor, often trivial developments or uses of existing pharmaceutical products, and to provide the government concrete guidance to avoid the proliferation of patents that may restrict legitimate competition and erode the role of India as a world supplier of active ingredients and medicines," he concluded.