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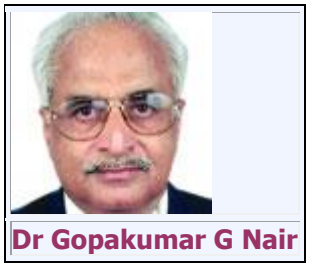
'Discourages the 'art of ever greening"

Category: Management
Thursday, 01 November 2012 19:02


Dr Gopakumar G Nair

The Indian Patent Law-the Patents Act, 1970 and Rules thereunder, truly encourages innovation. The Patent Statute has been instituted to encourage innovation and reward the true inventor. Innovation to be patentable needs to have novelty and inventive step (non-obvious) along with industrial applicability (utility). Distinguishing the innovation, which necessarily originates from a new or novel idea as opposed to what is already known is prior art or state-of-the-art, is essential for such an innovation to be rewarded with a 'Patent', which is a limited monopoly for a limited period of time over the jurisdiction of the country, subject to other laws of the country.

With the extreme dependency on and the increased use of Internet/web-based searches for problem-solution approach of innovation, very often the Teaching, Suggestion and Motivation (TSM test) for an 'innovation' comes from the prior art in the web. Such patent application involving 'frivolous' invention or 'extremely narrow incremental' innovations are not to be confused with innovations which meet the novelty, inventiveness and industrial applicability criteria. Innovations, which have originated from creative original ideas truly merits grant of a patent. Indian Patent Law is ideally designed to encourage such innovations and provide protection of the IP in them.

What Indian Patent Law is discouraging is the abuse of the statute to gain unfair advantage and the 'art of ever-greening' which has been very-well mastered by extensive 'research' in overseas (developed) countries to extend the protection beyond the statutorily validated period of 20 years. When a molecule or product is already marketed and is protected under a patent for 20 years, to seek extension of the same patent by tinkering with the molecule or the product so as to frivolously seek extension of the life of the patent in the 'tinkered' molecule for another 20 years is not what the Patent Statute is meant for.

Indian Patent law has the same benchmark for novelty, inventive step and utility comparable to patent law of US or EU. The additional filters for patentability in the Indian Patent Law are in Section 3 of the Patents Act, 1970. These sub-sections of Section 3 are designed to knock out frivolous and undeserving innovations which disturb the inherent balance of Right and Obligations, especially since the negative

right granted against the public will need to be compensated by the benefit of quality innovation in the claimed invention in the patent applied for. Further, once a patent protecting an innovation expires, the said innovation needs to be made available to the public, especially 'the person interested' to practise the invention in the expired patent. The Indian Patent Law nurtures and promotes innovation, the debates and disputes which are raging are related to the transition times, where non-patentable (Pre-1995 disclosures elsewhere) product patent related inventions attempted to squeeze in, in the guise of 'new innovations'.

Additionally, Indian Patent Law provides for pre and post grant opposition, revocation through IPAB and Counter-claim in an infringement suit. The US Patent Law (America Invents Act) has newly incorporated the provision for post-grant opposition under the newly constituted Patent Tribunal is a direct acceptance and validation of the Indian Patent Law Provisions. In fact, the changes and amendments made in the 35 USC in recent times as well as the recent judgements of the US Supreme Court as well as those from the Federal Circuit Appeal Court, validates the provisions of the Indian Patent Law.

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