

Proposed PCT II revisions in WIPO against developing countries: IDMA

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The proposal to harmonize patents with a new treaty being planned by WIPO to bring in an expeditious World Patenting is basically against the interest of the developing countries, which have so far resisted the undue haste in Patent harmonization drive in WIPO.

Now, WIPO proposes a new treaty for a Global Patenting Order. India must rightly oppose this move for a new treaty. We should reject any effort by WIPO or any other organization to impose unjust provisions or treaties which solely give a lopsided benefit to the MNCs and the Developed Countries in the name of 'harmonization'.

The Patent Cooperation Treaty (PCT), an international patent law treaty, concluded in 1970. It already provides for a unified procedure for filing patent applications to protect inventions in each of its Contracting States. The proposal from USA being considered by WIPO envisions 'automatic patent grants in all member states'. This is the dangerous part.

TRIPS Agreement recognizes the sovereignty of each member country and recognizes that, all said and done, patent laws are still 'territorial'. Hence each country can still decide what patent and in what manner a patent can be granted or denied. For instance, patenting of a yoga body position or an ayurvedic plant based medicine would be very difficult, as these are already in public domain. However, a country like USA still ends up granting patents to these on such flimsy grounds that it is novel as they do not know the origins. Imagine the havoc an 'automatic patent grant in all member states' can create!

The Indian Patent Act, 1970 is considered a landmark in legislation, as it recognized product patents way before many of the developed countries did – but at the same time protected the two key areas - Food products and Pharmaceuticals - which a developing country like India needed to promote growth indigenously - Today the world is benefiting by this far-sighted vision of large scale production of quality affordable medicines.

There have been many attempts to bypass and circumvent the WTO TRIPS Agreement by the developed world, at the expense of the developing countries. A few instances are: Setting up of IMPACT (International Medical Products Anti-Counterfeiting Taskforce) under WHO which tried to introduce IPR issues in the regulatory definition of 'counterfeit drugs' by tagging 'history' to it, so that even generic drugs could be treated as 'counterfeit'. This was successfully blocked by almost all countries and the original WHO definition survives.

India, as per commitment, recognized product patents for pharmaceuticals in 2005, however inserting a clause - section 3(d) – to ensure that minor and frivolous

improvements are not granted patents so that 'ever-greening' of patents is avoided, and also providing for 'Right of Pre-Grant Opposition', Compulsory Licensing etc; these provisions are perfectly in line with TRIPS and recognized by WTO.

Data Exclusivity and Patent Linkage: The Drugs Controller General of India was pressurized to link Marketing Approval of generic drugs to their Patent status, which was quashed by the High Courts. These measures are designed to block generic drugs registration and production, which not only affects India but also blocks India's supply of quality affordable drugs to the world. Data Exclusivity will destabilize one of India's most important legal safeguards that seeks to prevent the patenting of new forms, combination, known uses of medicines. Data exclusivity will create a new patent-like monopoly by blocking the registration of generic medicines.

There have been continuous attempts to subvert PCT in WIPO since 2001, such as Substantive Patents Law Treaty (SPLT), as TRIPS was proving to be tough to change. WIPO, unlike other organizations such as WTO is dependent on customers who pay fees for services rendered. The most number of patent applications in PCT is from US, Europe and Japan with over 90 per cent of all patents filed last year. Now, who will benefit in case of an 'automatic patent grant in all member states'? Such attempts reveal the clear commercial mission of big pharma – to produce and control all medicines, with the rest of the world ending up just purchasing it if they can afford it or else suffering in silence!