

India asks firms to provide data on working of patents

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India has asked all patentees and licensees to provide information on the working of patents in the country before March 31st, 2010.

The move is significant given that non-working of a patent is one of the core grounds for seeking the grant of a compulsory licence under India's patent law. The availability of such data could potentially open up opportunities for NGOs and other interested parties that may seek the grant of compulsory licences on account of non-working of patents. (The working of a patent means the commercial exploitation of the invention that is embodied in the patent – Ed.)

In a public notice, India's Controller General of Patents, Designs and Trade Marks, P H Kurian, said that such information (on the working of patents) is required to be provided as required by section 146 of the Patents Act and read with rule 131 of the Patents Rules 2003.

Under section 146, patentees or licensees are required to provide information on the extent to which the patented invention has been commercially worked in India within two months from the date of the notice or within such further time as the controller may allow.

The public notice also drew attention to specific provisions in the Act, which prescribes a penalty for the non-submission of such information. Under Section 122 of the Act, failure or refusal to furnish such information is punishable with a fine. Furnishing of false information is punishable with imprisonment or a fine or both.

Dr Gopakumar G Nair, founder of the intellectual property rights consultancy and advisory firm, Gopakumar Nair Associates, said that while the notice does not necessarily reflect any major policy change, it could help NGOs and others seeking the issue of compulsory licences.

"The Controller General of Patents, Designs and Trade Marks is merely implementing the Patent Act in both letter and spirit," Dr Nair told *Scrip*.

In a recent article in the bulletin of the *Indian Drug Manufacturers' Association*, Dr Nair also noted that although every patent that has been granted cannot be expected to be worked, those covering public needs especially in essential areas such as public health and nutrition will "attract attention" if not worked in India.

An official with a leading Indian company added that the availability of data as a result of the controller's notice would also bring some "transparency" in the area of working of patents.

Ranjit Shahani, president of the Organisation of Pharmaceutical Producers of India, said that any attempt to ensure that a section of the law is implemented in letter and spirit can only be a step in the right direction. "Patents are more often than not granted to a molecule much before it becomes a drug and so one will have to see implementation of this on the ground by enforcement agencies," Mr Shahani, who is also vice-chairman and managing director of Novartis India, told *Scrip*.

Section 84 of India's Patent Act provides that a person interested in making an application to the Controller General of Patents, Designs and Trade Marks for the grant of a compulsory licence on a patent could do so after the expiry of a specified period on grounds such as: reasonable requirements of the public with respect to the patented invention have not been satisfied; the patented invention is not available to the public at a reasonably affordable price or that the patented invention has not been worked in India.

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