

Critical Commentary on changes in Patent Law effective 20th May 2003

Current changes in Patent Law coming into effect can be categorized as follows:

- 1) TRIPs compliant changes in the Act and Rules coming into effect.
- 2) PCT adoption/adaptation into Indian Patent Law – Introducing the Internationalization of Patent Applications.
- 3) First and initial steps for induction of Budapest Treaty and patenting of Microorganism related processes.
- 4) Public Interest / Public health related areas.
- 5) Procedural improvements / simplifications / I.T. related communication technology facilities.

Each of the above categories will be discussed in detail later, in another article.

For the present, the immediate impact is outlined as follows:

Patent (Amendment) Act, 2003

- 1) Comes into effect on May 20, 2003
- 2) Duration of term of Patent protection increases to 20 years – including for patents which remain valid (effective) as on May 20, 2003.
- 3) Scope of Patentability widened – with amendments of Sec. 2(1) (j) and other sub-clauses in Sec. 2 and also by amending or deleting or addition of sub-clauses in Sec. 3 (inventions not patentable).

Ex:- Micro-organisms

Business method / software programs with applications (not “per se”)

Analytical methods in support of manufacturing process.

- 4) PCT and Budapest Treaty induction.
- 5) Deletion of Licence of Right / Redrafting Compulsory Licence provisions.
- 6) Reversal of Burden of Proof for process patents

- 7) Parallel Import provisions
- 8) Bolar exemption type provisions.
- 9) 18 months publication – Harmonization
- 10) Examination only on request (with 48 months) with payment of fees
- 11) Appellate Board (implementation delayed)

Patent Rules 2003

Changes in Patent Rules

There are three categories of changes.

- 1) Amendments coming into effect, compared to the Patent Rules, 1972
- 2) Amendments coming into effect, compared to the Patent Rules, 1999
- 3) Amendments originally proposed in the Draft Rules, 2002
- 4) Amendments now implemented in Patent Rules, 2003 in response to public comments to the Draft Rules, 2002

For brevities sake, I would deal with the 4th category here, simultaneously dealing with general impact of Patent Rules, 2003

Welcome Amendments

- 1) For the first time “provision for electronic filing (“by electronic transmission duly authenticated”) is incorporated. Specifically this is compulsory for “sequence listing of nucleotides and/or amino acids”.
- 2) Over and above specific characteristics of Abstract, the ‘Title’ also dealt with (in response to suggestion on Draft)
Note:- Subtle changes – Abstract shall not be changed to “May not” between Draft and Final Rules.
- 3) Full chapter on PCT with all obligatory provisions.

- 4) Examination related provisions – Form 19 – Fee structure – Application abandoned if not requested for examination within 48 months.
- 5) Publication after 18 months (new provision).
- 6) Inspection of published applications
- 7) Definition of ‘Public Interest’ remains unchanged in Chapter V (EMR) of Rules (This definition is not sustainable but not too disturbing – as Chapter V will go hopefully on 1.1.2005)
- 8) Conflicting / self defeating provisions (in language) deleted/amended in Chapter XIII of Rules and elsewhere (in response to suggestions).
- 9) Qualification of Patent Agents restricted to technically qualified persons.
- 10) Controller’s arbitrary powers restricted.
- 11) Fees Structure
Application fees for a patent (with single priority) reduced from Rs.5000/- to Rs.3000/- for Corporates and from Rs.1,500/- to Rs.750/- for individuals. The current nomenclature coming into effect is Natural Persons and other than Natural Persons (harmonization).
- 12) Reinstatement of entries of corresponding sections and relevant Rules in the Forms in Second Schedule. Reintroduction of earlier omitted Forms (in response to public-Industry comments). Reference to newly introduced sections or the Act and the Rules in respective Forms in Second Schedule.

The Patent administration has done a commendable job in examining the suggestions and views and implementing many or most practical suggestions. This is beginning of a new era, says the Patent Office. We hope, for the good of all including the public and the Nation, ‘a new era’ of promise and prosperity dawns on India and Indian Pharmaceutical Industry.

One thing is certain and no one will disagree. None can ignore the area of patents anymore, if one in serious pharma or any other business.
