

OVERVIEW AND COMPARISON

1999

- ✦ **Mailbox**
Providing the provisions for receiving the applications for the product patent in the field of drugs, medicines and agro-chemicals.
- ✦ **EMRs - Exclusive Marketing Rights**
Provisions Provisions for the grant of EMRs for distribution and sale of pharma products on fulfillment of certain conditions.
- ✦ **Simultaneous Patent Filing**
An applicant in India can file an application for a patent outside India simultaneously while filing the same in India.
- ✦ **Protection of security of India**
According to the provisions, the Central Government shall not disclose any information relating to any patentable invention or any application relating to the grant of patent under this Act, which it considers prejudicial to the interest of security of India.

2002

- ✦ **Term of Patent**
Term of every patent extended to 20 years from the date of filing of the application for the patent.
- ✦ **Formation of Appellate Board**
Composition, power, jurisdiction, procedure etc. with respect to Appellate board.
- ✦ **Section 3 Amendments: Non-patentable inventions**
Further Codification of non patentable inventions sec 3 & omission of sec 3 (g).
- ✦ **Deposition of Biological Material**
Deposition of biological material along with relevant data to authorised depository institution not later than the date of patent application in India.
- ✦ **Time for putting application in order for acceptance**
12 months instead 15 months.
- ✦ **Postpone acceptance of complete specification**
Not being later than 12 months instead 18 months from the date on which the objections referred to applicant.
- ✦ **Request for examination**
No application for patent shall be required to be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within 48 months from the date of filing of the application for patent.
- ✦ **Additional grounds for opposition to grant of patent**
(1) Complete Specification does not disclose or wrongly mentions the source or geographical origin of biological material used for invention.
(2) Anticipation having regard to the knowledge, oral or otherwise available within any local or indigenous community in India or elsewhere.
- ✦ **Date of Patent**
Every patent shall be dated as of the date on which the application for patent instead complete specification was filed.
- ✦ **Additional grounds for Revocation of patents**
(1) Applicant made or caused to be made an application for the grant of a patent outside India in contravention of section 39
(2) Complete Specification does not disclose or wrongly mentions the source or geographical origin of biological material used for invention.
(3) Anticipation having regard to the knowledge, oral or otherwise available within any local or indigenous community in India or elsewhere.
- ✦ **Patent Register: Digitalization & evidence**
(1) It shall be lawful for the Controller to keep the register of patents or any part thereof in computer floppies, diskettes or any other electronic form.
(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of, or extracts from, the register of patents, certified to be a true copy under the hand of the Controller or any officer duly authorised by the Controller in this behalf shall, in all legal proceedings, be admissible in evidence.
- ✦ **Additional general principles applicable to working of patented inventions**
(1) The protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.
(2) Patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socio-economic and technological development of India.
(3) Patents granted do not in any way prohibit Central Government in taking measures to protect public health.
(4) The patent right is not abused by the patentee or person deriving title or interest on patent from the patentee, and the patentee or a person deriving title or interest on patent from the patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.
(5) Patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.
- ✦ **Substituted provisions for compulsory licences**
Numerous provisions substituted with respect to procedure, power of controller, general purposes, terms & conditions, related patents, notification by central government for compulsory licences.
- ✦ **Burden of proof in case of suits concerning patented process infringement**
In any suit for infringement of a patent, where the subject matter of patent is a process for obtaining a product, the court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process.
- ✦ **Certain acts not to be considered as infringement**
(1) A patented invention solely for uses reasonably relating to the development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use, sale or import of any product.
(2) Importation of patented products by any person from a person who is duly authorised by patentee to sell or distribute the product.
- ✦ **Increased penalties**
increased penalties upto several thousands with respect to various provisions.
- ✦ **Increased penalties**
(1) Degree in science, engineering or technology from any University established under law for the time being in force.
(2) A person has, for a total period of not less than ten years, functioned either as an examiner or discharged the functions of the Controller under section 73 or both, but ceased to hold any such capacity at the time of making the application for registration.

2005

- ✦ **Amendment of Section 3 (d)**
Addition of provision for "New form of a known substance" & "Enhancement of the known efficacy" & insertion of explanation clause.
- ✦ **Omission of section 5**
Omission of specific clause for Inventions where only methods or processes of manufacture patentable as both product & process patent were made patentable to comply with provisions of TRIPs.
- ✦ **International depository authority & material submission**
(1) Submission of material to an international depository authority under the Budapest Treaty.
(2) The deposit of the material shall be made not later than the date of filing the patent application in India and a reference thereof shall be made in the specification within the prescribed period.
- ✦ **Opposition to the patent**
Substitution in provisions relating to opposition procedures to the patent with a view to streamline the system by having both pregrant and post grant opposition.
- ✦ **Substitution of new section for section 39**
Residents not to apply for patents outside India without prior permission.
- ✦ **Substitution of new section for section 5B**
Amendment of specification before Appellate Board or High Court.
- ✦ **Assignment of a patent**
Substitution of new section for section 6B i.e. Assignments, etc., not to be valid unless in writing and duly executed.
- ✦ **Substituted provisions for compulsory licences**
Numerous provisions substituted with respect to compulsory licences. Insertion of new section 92A i.e. Compulsory licence for export of patented pharmaceutical products in certain exceptional circumstances.
- ✦ **Increased penalties**
increased penalties upto several thousands with respect to various provisions.

SALEABLE FEATURES

1999

Sections 5, 40, 64 & 11B.

2002

Sections 2, 3, 5, 7, 8, 10, 12, 13, 17, 21, 22, 23, 24C, 25, 35, 36, 40, 43, 45, 50, 53, 57, 59, 60, 64, 67, 68, 72, 73, 76, 78, 80, 99, 100, 101, 10B, 11B, 120, 122, 123, 126, 128, 130, 132, 133, 138, 140, 141, 142, 143, 159, 162 & Chapter IV.

2005

Sections 2, 3, 7, 8, 9, 10, 11, 11A, 11B, 12, 13, 16, 17, 18, 19, 2B, 31, 34, 35, 36, 37, 44, 45, 48, 52, 53, 54, 57, 59, 60, 61, 62, 63, 64, 74, 78, 84, 87, 90, 100, 105, 107A, 113, 116, 117A, 117D, 120, 122, 123, 126, 135, 13B, 142, 151 & 159.

Amendment of

Insertion of

Omission of

Repeal of

Substitution of

Sections 24A-24F (i.e. Chapter IVA - EMR) & 157A.

Section 39.

The patents (Amendment) Ordinance, 1999.

None

Sections 39, 104A & 107A.

Sections 112 & 161.

None

Section 15, 4B, 125, 157A & new chapters for chapter XVI, XIX respectively.

Section 92A.

Sections 5, 22, 23, 24, 27, 152, 163 & chapter IVA.

The patents (Amendment) Ordinance, 2004.

Section 14, 15, 21, 25, 26, 39, 43, 5B, 65, 68, 117G, 133, 143, 145 & substitution of new headings for headings of Chapter V & Chapter VIII.