

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA ORDINARY WRIT JURISDICTION)

WRIT PETITION (CIVIL) NO. 4676 OF 2014

IN THE MATTER OF A PUBLIC INTEREST LITIGATION

SHAMNAD BASHEER ... PETITIONER

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENTS

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10.12.2013

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FILED BY:-

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Date: 27.05.2014

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SYNOPSIS & LIST OF DATES

The Petitioner is aggrieved by the arbitrary, illegal and inconsistent actions of Respondent authorities in dealing with application under the Right to Information Act, 2005 ('RTI Act'). The Respondent authorities rejected the applications on the ground that there is already an information dispensation mechanism provided under the Patents Act, 1970 and Rules, enacted prior to the RTI Act. The impugned actions of Respondent authorities are violative of Articles 14, 19 and 21 of the Constitution of India, apart from the provisions of the RTI Act.

The Patents Act and Rules are wholly inadequate in providing the full range of important patent information that the public are otherwise entitled to under the RTI Act. Furthermore, the Patents Act confers unbridled powers on Respondents to frame the procedure for inspection and obtaining copies of public records. Consequently, the procedure adopted by the Respondent authorities is devoid of any procedural safeguards, does not contain any strict time limit for releasing information, lacks an effective grievance redressal mechanism and imposes an unduly high cost of access to information.

Hence, the provisions of the Patents Act are thoroughly inconsistent with the scheme and object of the RTI Act and contravene the constitutional mandate to promote easy and affordable access to public information.

The instant petition seeks this Hon'ble Court to decide whether a mechanism for obtaining information enacted prior to the RTI Act override the provisions of the RTI Act and rules enacted thereunder.

The Section 22 of the RTI Act in unambiguous terms states that the provisions of the RTI Act shall have effect notwithstanding any pre-existing mechanisms. The insertion of the provision suggests that the Parliament intended to cure infirmities in pre-existing mechanisms in providing easy, effective and affordable access to information.

Contrary to the clear intention of the legislation, this Hon'ble Court in W.P. (C) 11271 of 2009, decided on 01.06.2012, held that the provisions of the RTI Act are inapplicable due to the presence of pre-existing mechanism under the Companies Act, 1956. The Petitioner submits that the decision (in W.P. (C) 11271 of 2009) is erroneous, bad in law and contrary to public policy.

The Petitioner humbly begs to differ with the above finding as it did not fully examine the stark differences between the information dispensation framework under the RTI Act and the Companies Act, and therefore found no inconsistency between the provisions of the RTI Act and the Companies Act. Furthermore, the decision incorrectly ruled that the information available in 'public domain' does not fall within the ambit of 'right to information' defined under Section 2(j) of the RTI Act.

The implications of the decision has enabled Respondent authorities to obstruct, delay, impose exorbitant fees for providing information and thereby using this as a tool to discourage request for information, hence frustrating the Petitioner's constitutional guarantee of right to information.

The Respondent authorities have viewed access to public records as a profitable enterprise as there is a significant difference in chargeable fees for obtaining information under the RTI Act and Rules in comparison to Patents Act and Rules. This is contrary to the clear intention of the legislature expressed in enacting the RTI Act.

The RTI Act is a comprehensive piece of legislation with adequate procedural safeguards to provide information to citizens. The other mechanisms prior to the RTI Act do not adequately safeguard citizens' constitutional right to information.

LIST OF DATES

- | | |
|------------|--|
| 2003 | Respondent No. 1 notified the Patents Rules, 2003 which contains the rules and procedure applicable for obtaining information from the Register of Patents |
| 2005 | Parliament of India enacted the RTI Act to provide speedy and effective mechanism for citizens to obtain information from all public authorities (including Respondent No. 2) |
| 10.10.2008 | The 88 th Report on 'Patents and Trade Marks Systems in India' of the Departmental Related Standing Committee on Commerce of Rajya Sabha stated Section 144 of the Patents Act is contributing to the lack of transparency in how the patent office examines applications and recommended the repeal of the provision |
| 15.04.2010 | Office Instruction issued by Respondent No. 2 instructing their officers to provide access to information relating to pre-grant opposition to ensure compliance with the RTI Act |

- 11.05.2011 The Central Information Commission ('CIC') *vide* its Decision No. CIC/SM/A/2011/000237/SG/12351, pending before this Hon'ble Court as W.P. (C) No. 3530 of 2011, held that it is the citizen's prerogative to choose the RTI mechanism or the pre-existing mechanism
- June 01, 2012 This Hon'ble Court in *Registrar of Companies & Others v. Dharmendra Kumar Garg & Another*, W.P. (C) 11271 of 2009 held that the RTI Act is inapplicable to information which is already in the 'public domain' by virtue of a pre-existing information dispensation mechanism under other another legislation (in this case the Companies Act)
- 31.07.2012 The Right to Information Rules, 2012 ('RTI Rules') enacted by the Central Government in exercise of powers conferred by section 27 of the RTI Act and in suppression of the Right to Information (Regulation of Fee and Cost) Rules, 2005
- 10.12.2013 Application filed by the Petitioner under the RTI Act before the IPO at New Delhi, Mumbai, Chennai and Kolkata
- 18.12.2014 The CPIO at IPO Mumbai communicated the acceptance of the application (dated 10.12.2013), however, dealt the request as per Patents Rules
- 23.12.2013 The CPIO of IPO, New Delhi (Respondent No. 3) rejected the RTI application (dated 10.12.2013) and redirected the Petitioner to prefer a fresh application under Patents Act
- 24.12.2013 The Petitioner was constrained to file a fresh application under the Patents Act seeking information before the IPO at New Delhi. However, the Petitioner further stated the application was preferred under protest and without prejudice to

any rights or remedies available under the RTI Act

- 24.12.2013 The Petitioner under protest deposited the demanded fees to IPO at Mumbai in relation to reply dated 18.12.2013
- 08.01.2014 The CPIO at IPO Kolkata communicated the acceptance of the application (dated 10.12.2013), however, dealt the request as per Patents Rules
- 15.01.2014 The Petitioner under protest deposited the demanded fees to IPO at Kolkata in relation to reply dated 08.01.2014
- 03.02.2014 The Petitioner sent an email communication to CPIO of IPO at New Delhi to remind and expedite the reply to application dated 24.12.2013 filed under Patents Rules
- 04.02.2014 The CPIO of IPO at New Delhi directed the concerned personnel in RMID section to take immediate steps in providing the information requested by Petitioner (dated 24.12.2013)
- 28.02.2014 Respondent No. 1 notified the Patents (Amendment) Rules, 2013 *vide* publication through Gazette of India containing the amended fee schedule for obtaining public records from Respondent No. 2
- 27.05.2014 Hence, the present Petition

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA ORDINARY WRIT JURISDICTION)

WRIT PETITION (CIVIL) NO. 4676 OF 2014

IN THE MATTER OF A PUBLIC INTEREST LITIGATION

SHAMNAD BASHEER ... PETITIONER

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENTS

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OF MANDAMUS OR ANY OTHER WRIT, ORDER OR DIRECTION OF LIKE NATURE THEREBY DIRECTING THE RESPONDENTS TO ACCEPT APPLICATIONS SEEKING PUBLIC INFORMATION UNDER THE RIGHT TO INFORMATION ACT, 2005 & RULES AND TO PROVIDE INFORMATION IN ACCORDANCE WITH THE SAID LEGISLATION

TO

THE HON'BLE CHIEF JUSTICE AND HER
COMPANION HON'BLE JUDGES OF
THE HIGH COURT OF DELHI

The humble Petition of the Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is a citizen of India. The Petitioner has no personal interest in the litigation and that the petition is not guided by self-gain or for gain of any other person or institution or body, save as a member of the public and that there is no motive other than of public interest in filing the Writ Petition.
2. The Petitioner has based this Writ Petition from authentic information and public documents sourced from communications between the Petitioner and Respondent

authorities, requests under the Right to Information Act, 2005 (hereinafter referred to as 'RTI Act'), Reports of Parliamentary committees and other publically available information.

3. The present Petition, if allowed, would benefit the citizens of this country as it is aimed at improving transparency and accountability in the patent system. Since these persons are too numerous and have no personal interest in the matter, they are unlikely to approach this Hon'ble Court on this issue.
4. The Respondent No.1 is the Secretary to the Union of India, Ministry of Commerce and Industry and the Respondent No. 2 is the Controller General of Patent, Designs & Trade Marks (hereinafter referred to as 'CGPDTM'), a statutory body and appointed under Section 3(1) of the Trade Marks Act, 1999. The Respondent No. 2 is also the Controller of Patents administering the Indian Patent Office (hereinafter referred to as 'IPO') as under Section 73 of the Patents Act, 1970. The Respondent No. 3 is the Central Assistant Public Information Officer and Office Superintendent at IPO at New Delhi. The Respondents hereinabove are State for the purposes of Article 12 of the Constitution and public authorities against whom a Petition under Article 226 is maintainable. To best of Petitioner's knowledge, no other person or body or institution are likely to be affected by the orders sought in this Writ Petition.

5. The Petitioner is a public spirited citizen and served as the Ministry of Human Resource Development Chair Professor in Intellectual Property Law at the West Bengal National University of Juridical Sciences, Kolkata from 2008-09 to 2013-14. Prior to this, the Petitioner served as the Frank H. Marks Visiting Associate Professor of Intellectual Property Law at the George Washington University Law School located in Washington D.C and as a Research Associate at the Oxford Intellectual Property Research Centre at the University of Oxford. The Petitioner graduated from the National Law School of India University, Bangalore and did his Masters in Law (BCL), MPhil and DPhil (equivalent to the PhD) from the University of Oxford as a Wellcome Trust Scholar. He is a renowned scholar in India on Intellectual Property Law (hereinafter referred to as 'IP law') and policy with over fourteen (14) years of experience in this field. In 2005, the Petitioner founded SpicyIP, a non-profit online portal (accessible at: www.spicyip.com) to make IP laws and policy making more transparent, open and inclusive through rigorous analysis of legal developments, policies and institutions. The Petitioner, through SpicyIP and various other public-spirited advocacy efforts, has sought to foster transparency and accountability in Indian IP institutions and policies through a dispassionate analysis of IP cases, policies, working of IP institutions and scrutinizing public documents. In furtherance of this cause, the Petitioner has frequently used the Right To Information (hereinafter referred to as 'RTI') mechanism provided under the RTI Act, for obtaining information from public authorities. The Petitioner has in the

past intervened and actively assisted courts in matters involving serious questions of law related to IP. The Petitioner appeared *in person* before the Hon'ble Supreme Court in *Novartis v. Union of India* [C.A. No. 2706-2716 of 2013] as intervener-cum-amicus in purely academic interest and assisted them in interpretation of certain IP laws. A comprehensive list of Petitioner's public-spirited activities and contributions is annexed herewith as **ANNEXURE P-1**.

6. The Petitioner is aggrieved by the arbitrary, illegal and inconsistent manner in which various public authorities of the IPO administered by CGPDTM, Respondent No. 2 herein, are dealing with applications seeking access to public records. Particularly, the Petitioner is aggrieved by rejection and refusal of applications under the RTI Act by various public authorities under Respondent No. 2 on the ground that the RTI Act is not applicable as there exists an information dispensation mechanism under the Patents Act and Rules, enacted prior to the RTI Act. The Petitioner has the means to pay the costs, if any, imposed by the Hon'ble Court and on an undertaking to the Hon'ble Court in that respect.
7. The Petitioner prefers this Writ Petition thereby challenging the arbitrary, illegal and inconsistent actions and procedures followed by the Respondents in dealing with applications filed under the RTI Act, as the same seriously impinges upon his rights and interests and larger public. It is further clarified that the present petition is being filed *bona fide* in public interest and is not for any private interest whatsoever.

BRIEF STATEMENT OF FACTS

8. The Petitioner sought to investigate the status of “commercial working” of certain patented drugs in India, used in treatment of several life threatening diseases such as Cancer, AIDS, Diabetes and Hepatitis. Pursuant to this, the Petitioner requested for certain public information held by Respondent No. 2 as the same was not available in the public domain. The information sought pertains to statements regarding “working” of patented inventions that are required to be submitted by all patentees and licensees every year, under Section 146(2) read with Rule 131 of the Patents Act and Rules. The aforesaid statement is mandatory and must disclose information specified in a certain format as per ‘FORM-27’ provided under the Second Schedule to Patents Rules. In a laudable initiative, the Respondent No. 2 made efforts to ensure free public access to this information by creating an online database (accessible at: [ipindiaservices.gov.in/working of patents](http://ipindiaservices.gov.in/working%20of%20patents)). However, the said database is significantly limited as it contains information with respect to the calendar year 2012 and 2013 only, and not prior years (i.e. 2003 to 2011). A snapshot of the homepage of the said database as on 18.07.2014 is annexed herewith as **ANNEXURE P-2**.
9. Consequently, the Petitioner *vide* letters dated 10.12.2013 filed four (4) applications under Section 6 the RTI Act before four (4) different public authorities under Respondent No. 2. Through the applications, the Petitioner sought true copies of FORM-27s submitted by patentees of 60 patented inventions

used in treatment of several life threatening diseases, such as Cancer, AIDS, Diabetes and Hepatitis, for the years 2005 to 2012. Copies of the said applications are annexed herewith collectively as **ANNEXURE P-3 (Colly)**.

10. The details of the public authority, date of reply and action taken by the IPO in respect of the abovementioned applications dated 10.12.2013 is provided in the following table:

I.	II.	III.
Public Authority	Date of Reply	Action Taken
IPO, New Delhi	23.12.2013	No information provided since application was made as per RTI Act
IPO, Mumbai	18.12.2013	Information provided as per Patents Rules, 2003 (although application was made under RTI Act)
IPO, Kolkata	08.01.2014	Information provided as per Patents Rules, 2003 (although application was made as per RTI Act)
IPO, Chennai	09.01.2014	Information provided under the RTI Act and Rules thereunder

11. As evident from Column (III) above, the Petitioner has been subjected to arbitrary, illegal and inconsistent procedures from Central Public Information Officers (**'CPIOs'**) of various public authorities under Respondent No. 2.
12. The CPIO of IPO at New Delhi, Respondent No. 3 herein, *vide* reply dated 23.12.2013, rejected the abovementioned application on the ground that the RTI Act is not applicable, due to the presence of an information dispensation

mechanism under the Patents Rules. The CPIO further stated that provision of information under the RTI Act, rather than the Patents Rules, would disproportionately divert resources of their office and that it would amount to contravention of judgment of this Hon'ble Court in W.P. (C) No. 11271 of 2009, decided on 01.06.2012. The CPIO further sought attention to an undated Public Notice titled 'Information in Public Domain' (hereinafter referred to as 'Public Notice') along with the said reply. The said undated Public Notice notes that a variety of information, pertaining to Respondent No. 2, is available on their official website through IPAIRS Version 2.0 (accessible at: www.ipindia.nic.in). Copy of the said reply of the CPIO, along with the copy of the abovementioned Public Notice (undated), is annexed herewith as **ANNEXURE P-4 (Colly)**.

13. The Petitioner vehemently denies that there exists any provision or procedure under the Patents Act and Rules entitling the Petitioner or the public to obtain information sought herein; i.e. FORM-27 submitted as per Section 146(2) read with Rule 131. Specifically, the provisions of the Patents Act and Rules extracted and relied upon in the Public Notice does not include the information sought by the Petitioner. Furthermore, the official website of the Respondent No. 2 contains information relating to the calendar year 2012 and 2013 alone and not prior years (i.e. 2005 to 2011) and does not contain the entire information sought by the Petitioner. Hence, it is stated that the information sought by the

Petitioner is not available in public domain and therefore the Public Notice is inapplicable.

14. In any case, the Public Notice is illegal, arbitrary and does not have the force of law. It is submitted that the Patents Act and Rules are wholly inadequate in providing the full range of important patent information that the public are otherwise entitled to under the RTI Act. Therefore, the (undated) Public Notice is inconsistent with the provisions of the RTI Act.
15. The Petitioner contends that Respondent No. 3 failed to appreciate that the information was sought under the RTI Act. The IPO at New Delhi being the public authority is under a statutory obligation to provide the requested information as per the RTI Act and could not have denied information under the garb of an illegal and arbitrary Public Notice. In any event, the information is not available in the public domain.
16. Consequently, on 24.12.2013 the Petitioner had no option but to prefer a fresh application under the Patents Act and Rules to the IPO at New Delhi. The said application was made under protest and without prejudice to rights and remedies available under the RTI Act. The Petitioner, however, did not receive any communication or acknowledgement to the application dated 24.12.2013 and hence was constrained to send a reminder on 03.02.2014 *vide* an electronic mail seeking a speedy response. Pursuant to the reminder, the CPIO *vide* its reply dated 04.02.2014 directed the concerned personnel in Record Management and Information Dissemination (hereinafter referred to as 'RMID') section to

take immediate steps in providing the information. However, the Petitioner has not received any response from the RMID section yet, despite the passage of five (5) months from the date of filing (i.e. 24.12.2013). Copies of the said application and communications to the public authority are annexed herewith collectively as **ANNEXURE P-5(Colly)**.

17. The CPIOs of the IPO at Mumbai and Kolkata, *vide* their replies dated 18.12.2013 and 08.01.2014, respectively, accepted the application under the RTI Act. Strangely though, the applications were dealt with and disposed off in accordance with the Patents Rules, instead of the RTI Act. In other words, the applications were filed under the RTI Act and accepted as such, the CPIOs applied the scheme prescribed under the Patents Rules, especially for the purpose of computing fees payable. The Petitioner *vide* letters dated 24.12.2013 and 15.01.2014 to the IPOs at Mumbai and Kolkata, respectively, paid the demanded fees under protest. Copies of the said correspondence between the Petitioner and CPIOs hereinabove are collectively marked herewith as **ANNEXURE P-6 (Colly)**.

18. The Petitioner contends that the actions of the CPIOs of IPO at Mumbai and Kolkata are patently wrong, illegal and arbitrary, inasmuch as they accepted the filing fee under the RTI Act and then proceeded to dispense information and charge fees under the terms of the Patents Act and Rules. There is no provision or mechanism, under either the RTI Act or the Patents Act that permits or sanctions such inconsistent and arbitrary actions. Therefore, the CPIOs

hereinabove ought to have only applied the RTI Act for dispensing information instead of the Patents Act and Rules. Furthermore, it is reiterated that there is no provision or procedure under the Patents Act and Rules which entitles the public to obtain patent working information submitted as per Section 146(2) read with Rule 131, i.e. FORM-27.

19. The Petitioner challenges the arbitrary, illegal and inconsistent application of rules and procedure adopted by various CPIOs of Respondent No. 2, including Respondent No. 3 herein, in dealing with access to public records.

INFORMATION UNDER PATENTS ACT, 1970 & RULES

20. The Patents Act grants a twenty (20) year monopoly for inventions that are novel, non-obvious and useful. In this sense, the grant of a patent represents a “social bargain” between the state and the inventor i.e. an inventor who discloses details of his or her new invention to the public is granted a state sanctioned monopoly of twenty (20) years in return for such disclosure. The assumption is that such disclosure adds to the wealth of scientific and technological knowledge available to the public and makes society better off. In short, *disclosure* and *transparency* lie at the heart of most patent regimes, including the Patents Act as enacted by the Parliament of India.
21. It is thus that Section 10(4)(a) of the Patents Act requires every application to “fully and particularly describe the invention and its operation or use and the method by which it is to be performed”. Furthermore, Section 10(4)(b) of the

Patents Act goes on to mandate that every application shall “disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection”. Any failure to comply with requirement will result in a rejection of the application. The Hon’ble Supreme Court of India in *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries* [AIR 1982 SC 1444] laid further emphasis by noting that “the price of the grant of the monopoly is the disclosure of the invention to the Patent Office, which after the expiry of the fixed period of the monopoly, passes into the public domain.”

22. Furthermore, the Hon’ble Supreme Court in *Novartis AG v. Union of India* [C.A. No. 2706-2716 of 2013, decided on 01.04.2013] categorically held that coverage of patent right has to be commensurate with disclosure. In other words, any patent claim that is not supported by adequate disclosure in the text of the patent specification will be rendered invalid. In pertinent part, the Apex Court observed that:

“139. The dichotomy that is sought to be drawn between *coverage* or claim on the one hand and disclosure or enablement or teaching in a patent on the other hand, seems to strike at the very root of the rationale of the law of patent. Under the scheme of patent, a monopoly is granted to a private individual in exchange of the invention being made public so that, at the end of the patent term, the invention may belong to the people at large who may be benefited by it. To say that the *coverage*

in a patent might go much beyond the disclosure thus seem to negate the fundamental rule underlying the grant of patents ...”

23. The Patents Act also encourages wider public participation to ascertain the merits of the invention and whether or not a patent ought to be granted. The Patents Act grants interested third parties the right to oppose any patent application before the Respondent No. 2 on the ground that the said application does not reveal an invention that is patentable (for reasons that it is either not an invention or not new, useful and non-obvious). Therefore, without adequate disclosure and access to patent information, third parties will find it difficult to mount such challenges and prevent the imposition on unwarranted 20 year monopolies on society. The Patents Act also provides for a post grant opposition where a patent can be challenged within a year of its grant; and a mechanism to revoke a granted patent at any stage in its career. Given this extensive mechanism designed to elicit public participation in patent decision making, it is clear that transparency and openness lie at the heart of an efficient patent system, where all information pertaining to patents are readily and easily accessible.
24. The Patents Act further recognizes and permits the use of patent information for conducting experiments or research with a view to learning more about the patented technology or even to help improve the technology and thereby benefit society. This exception is found in Section 47(3) of the

Patents Act commonly referred to as the “experimental use” exception; any third party can engage in such experimentation with patented information and the use of the information during the pendency of the monopoly will not count as infringement. Without adequate openness to patent information, this public policy exception in the law designed to help advance science and technology will come to naught.

25. The overwhelming predominance of public interest in the current patent framework is further demonstrable through the powers conferred upon the Respondents by the Patents Act. The Patents Act, under Section 66, permits Respondent No. 1 to revoke any patent during its validity, if the patent or mode on in which it is exercised is mischievous to State or generally prejudicial to the public. Furthermore, Chapter XVI of the Patents Act envisages a mechanism for the grant of compulsory license over a patented invention if the below grounds are satisfied:

- (a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied; or
- (b) that the patented invention is not available to the public at a reasonably affordable price; or
- (c) that the patented invention is not worked in the territory of India.

These provisions were inserted to safeguard the affordability and accessibility of patented inventions, especially in relation to public health. It is stated that the effectiveness of the

provisions and its implementation is largely dependent on access to relevant patent information. In short, public access to information on the patent and scientific information lies at the very heart of a well-functioning patent system.

26. Although the Patents Act offers some scope for obtaining patent information, it is far costlier and more cumbersome to do so through the mechanism under the Act than it is under the RTI rubric. Furthermore, the extent of disclosure of information under the Patents Act and Rules is limited to narrow categories of public information, specifically provided in Sections 11A(6)(b), 43(2), 72(1) and 153 and their corresponding Rules.
27. Firstly, Section 11A(6)(b) read with Rule 27 of the Patents Act and Rules permit any person to inspect and obtain copies of complete specifications and provisional specifications after its publication. Rule 27 reads as follows:

“27. Inspection and supply of published documents.- After the date of the publication under Section 11A, the application together with the complete specification and provisional specification, if any, the drawing, if any, and the abstract and any other document filed in respect of the application may be inspected at the appropriate office by making a written request to the Controller on payment of the fee in that behalf and copies thereof may be obtained on payment of fees specified in the First Schedule.”

It bears noting that under the terms of this provision, correspondence between the patent applicant and Respondent No. 2 cannot be obtained. Such information may often contain admissions on the scope of the proposed patent claims by the patent applicant and is absolutely critical to members of the public that wish to challenge patent applications through opposition proceedings. It is another matter that the Respondent No. 2 has chosen to put up some of this information online. However, that is purely discretionary and is not a matter of entitlement for the general public.

28. Secondly, Section 43(2) read with Rule 74A of the Patents Act and Rules permit any person to inspect and obtain copies of complete and provisional specification, drawings, abstract and other related documents in relation to any patented invention. Rule 74A reads as follows:

74A. Inspection of documents related to grant of patent - After the date of publication of a grant of a patent, the application together with the complete specification and provisional specification, if any, the drawing if any, abstract and other documents related thereto may be inspected at the appropriate office by making a written request to the Controller and on payment of fee and may obtain copies on payment of fees specified in the First Schedule.

It is to be noted that the information above can be obtained only after publication of the grant of the patent and not

before, when the patent application is pending. Needless to say, if a patent is ultimately rejected, no information can be obtained under this provision.

29. Thirdly, Section 72(1) read with Rule 95 of the Patents Act and Rules permits any person to inspect and obtain certified copies of records maintained in the 'Register of Patents'. Section 72(1) reads as follows:

72. Register to be open for inspection.-(1)
Subject to the provisions contained in this Act and any rules made thereunder, the register shall at all convenient times be open to inspection by the public; and certified copies, sealed with the seal of the patent office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

The 'Register of Patents' required to be maintained by Respondent No. 2 as per Section 67(1) read with Rule 88 contains information pertaining to only inventions which have already been granted a patent monopoly. Furthermore, the information is limited to title of the invention, the date of grant, details of the patentee and relevant court proceedings.

30. Lastly, Section 153 of the Patents Act permits any person to request the Controller to provide certain kinds of patent information, upon the payment of a fee. Section 153 reads as follows:

153. Information relating to patents.-A person making a request to the Controller in the prescribed manner for information relating

to any such matters as may be prescribed as respects any patent specified in the request or as respects any application for a patent so specified shall be entitled, subject to the payment of the prescribed fee, to have information supplied to him accordingly.

31. As evident from above, the range of patent information accessible under Section 153 is dependent on the “rules” made by the Central Government, Respondent No. 1 herein. Rule 134 enacted pursuant to this provision restricts accessible information to the following heads:

- i. Date of filing of complete specification;
- ii. Date of abandonment of the patent application;
- iii. Date when the information under Section 8 has been filed;
- iv. Date of publication of application under Section 11A;
- v. Date of withdrawal of application under Section 11B;
- vi. Date of request for examination under Section 11B;
- vii. Date of issuance of examination report under Section 12;
- viii. Date of refusal of patent application;
- ix. Date of grant of patent;
- x. Date of payment of renewal fee;
- xi. Date of expiry of the patent;
- xii. Date of entry of application in the register;
- xiii. Date of any application made or action taken involving an entry in the register;

32. In short, it is clear that public can obtain patent information only to the extent specified in any of the following provisions:

- (a) Section 11A for obtaining complete or provisional specification and related applications, after its publication;
- (b) Section 43(2) for inspection and obtaining copies of complete and provisional specification, drawings, abstract and other related documents, in relation to granted patents after the date of publication of the grant;
- (c) Section 72 (1) for inspection and obtaining extracts from the Registry of Patents; and
- (d) as prescribed by the Central Government under Section 153.

In other words, the public has no *right* to obtain information from the Respondent No. 2 unless the information is specifically mentioned in Sections 11A(6), 43(2), 72(1), 153 or Rules enacted pursuant to these provisions.

33. From the above, it can be seen that the Patents Act and Rules, significantly limits public access to patent related information held by Respondent No. 2. To enumerate further, the information sought by the Petitioner herein [i.e. FORM-27s relating to commercial working of patents] cannot be obtained under any of the provisions described above. Although the Sub-rule (3) of Rule 131 authorizes the Respondent No. 2 to publish FORM-27s in the Official Gazette, the said rule is not mandatory. Moreover, the Petitioner is unaware of any such publication in the Official Gazette till date. The online database providing free public access to FORM-27s is very limited in that it provides

information only for the calendar year 2012 and 2013. Secondly, it is wholly insufficient and thirdly, it is not an entitlement under the terms of the Patents Act, therefore largely discretionary and leaves the public at the mercy of Respondent No. 2 who could well decide to restrict access to such information in future. In fact, the industry lobby are particularly upset at compulsory licensing and the requirement for submitting working information (which in many ways provides fodder for a compulsory licensing application) have been ferociously campaigning against the public disclosure norm. It is conceivable that at some future point in time, the IPO may make it more difficult for a member of the public to obtain patent “working” information.

34. Apart from the above, there are various categories of other information that cannot be obtained as a matter of entitlement under the terms of the Patents Act and rules, as listed below:

- (a) Report of the examiner (Section 144);
- (b) In relation to patent applications prior to their grant (i.e. pre-grant phase):
 - i. any correspondence between the applicant and the IPO;
 - ii. the details of any opposition filed against the grant of patent approval (i.e. pre-grant opposition history);
 - iii. the details of patent prosecution of an application claiming the same invention in other jurisdictions;

- iv. the decisions of Respondent No. 2 rejecting patent applications;
 - v. the decisions of Respondent No. 2 in disposing off oppositions to grant of patent approval;
- (c) In relation to granted patents (i.e. post-grant phase):
- i. the Notice of Opposition against a patent grant;
 - ii. the decisions of Opposition Board recommending the way forward on a post grant opposition;
 - iii. any applications seeking compulsory license, oppositions to such licenses and decisions thereof;
- (d) In relation to patent examiner:
- i. their appointments and removals;
 - ii. their qualifications;
 - iii. the details of work assigned to them;
- (e) Statement of accounts;
- (f) Register of patent agents and their details;

Additionally, other information held and maintained by Respondent No. 2 in relation to patents as per any law or regulation other than the Patents Act and Rules, are not available under the present scheme enumerated above.

35. Furthermore, the Patents Act explicitly prohibits access to reports of patent Examiners in terms of Section 144 of the Act, which reads as follows:

144. Reports of examiners to be confidential.-
The reports of examiners to the Controller under this Act shall not be open to public inspection or be published by the Controller; and such reports shall not be

liable to production or inspection in any legal proceeding unless the court certifies that the production or inspection is desirable in the interests of justice, and ought to be allowed.

36. It is submitted that an examiner's report on a pending patent application is absolutely vital for a transparent, robust and effective functioning of the patent system. Access to such information is in the public interest and ensures good governance and reduces corruption inasmuch as that the report of the Examiner cannot then be overlooked by superior Controllers without rhyme or reason. Furthermore, the provision violates Articles 19(1)(a) and 19(1)(g) of the Constitution of India inasmuch as it unreasonably and arbitrarily prohibits public access to information without any justifiable end. Moreover, prohibiting public access to examiner's report strikes at the very heart of the RTI Act, and therefore any provision that facilitates such prohibition is rendered invalid by virtue of Section 22 of the RTI Act.

37. It is further submitted that the Department Related Standing Committee on Commerce of Rajya Sabha in their 88th Report on 'Patents and Trade Marks Systems in India' dated 24.10.2008 recommended the repeal of Section 144 of the Patents Act in a bid to foster greater public transparency. In pertinent part, the Report reads as follows:

"The Committee feel that the lack of transparency with regard to the process of examination of applications not only tends to weaken the patent system, it makes the Patent

Office non-participative and unaccountable for its decisions. Moreover, for a pre- and post-grant opposition system that India has, it is all the more important that opponents can track the work of Examiners, so that they can decide whether to file an opposition based on prior/art evidence, an Examiner may have missed. Transparency would help strengthen the patent system and also assist the Examiners constructively in their work.”

The relevant extracts of the 88th Report on ‘Patents and Trade Marks Systems in India’ is annexed herewith as **ANNEXURE P-7**. Therefore, it is submitted that such information ought to be made available to the public.

38. It is submitted that the Respondent No. 2 has effectively admitted that the Patents Act and Rules is very limited and insufficient to provide access to critical public information under their control. Illustratively, the Office Instruction, bearing No.CG/OI/2010/89, dated 15.04.2010, issued by Respondent No. 2 directed all branches of IPO to provide access to information relating to pre-grant opposition. Importantly, the aforesaid Office Instruction recognizes that the public are not entitled to pre-grant opposition information under the terms of the Patents Act and Rules, but that this ought to be provided under wider public interest norms envisaged by the RTI Act. The relevant portion of the Office Instruction, dated 15.04.2010, reads as follows:

“Taking into consideration the enlargement of the grounds of pre-grant opposition by way of representation by any person u/s. 25(1),

bringing them at par with the grounds of post-grant opposition u/s. 25(2), and also keeping in mind that Right to Information (RTI) Act which is now in force, it is therefore decided that, after the publication of an application for a Patent u/s. 11(A) all offices shall make available on the request of any person, the application on any form or otherwise on a plain paper, copies of all the letters/correspondence between the office and the applicant/agent or vice-versa along with the application and complete specification and provisional specification....”

A copy of the aforesaid Office Instruction, Instruction, bearing No.CG/OI/2010/89, dated 15.04.2010, is annexed herewith as **ANNEXURE P-8**.

39. Moreover, the Patents Act confers unbridled powers on Respondents to frame the procedure for inspection and obtaining copies of public records. Consequently, the procedure adopted by the Respondent No. 2 is devoid of any procedural safeguards, does not contain any strict time limit for releasing information, lacks an effective grievance redressal mechanism and imposes an unduly high cost of access to information. Needless to state, all of this discourages the public from seeking information.

INFORMATION UNDER THE RTI ACT

40. The RTI Act is a special legislation enacted by the Parliament in furtherance of the right to know, a fundamental right guaranteed by the Constitution of India. Section 3 of the RTI

Act recognizes the right of every citizen to access public information.

41. The RTI Act was enacted to cover the *entire* gamut of information in the possession of public authorities and not merely limited to information which was not available earlier. In other words, the RTI Act was intended to cover all public records, including those which are available in the public domain through other means. Section 2(f) of the RTI Act defines “information” amply supports this proposition, which reads as follows:

“(f) any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any law for the time being in force....”

42. Section 2(j) of the RTI Act provides a right to all citizens to access any information “held by or under the control of the public authority”. Every public authority is mandatorily obliged to provide all information within their control, barring a few categories expressly exempted under Sections 8 and 9 of the RTI Act. In other words, every public authority must provide all information unless specifically exempted under Sections 8 and 9 of the RTI Act. Contrast this with the Patents Act and Rules, which permits the disclosure of only

certain kinds of patent information, as found in Sections 11A or 43(2) or 72 or 153 or their corresponding Rules.

43. At the time of enactment of the RTI Act, the Parliament of India was aware of the infirmities inherent in pre-existing information dispensation mechanisms and therefore crafted several procedural safeguards in order to facilitate citizen's right to access information. In a nutshell, the RTI Act is a complete code for providing access to information held by government agencies.
44. For the avoidance of any doubt, the Parliament inserted a non-obstante clause which in unambiguous terms stipulates that the RTI Act will have overriding effect over any pre-existing mechanism for information dispensation. Section 22 of the Act reads as follows:

“22. Act to have an overriding effect.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Officials Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

In a nutshell, the legislative intent suggests that citizens can avail the RTI mechanism at all times, irrespective of any other Act or Rules thereunder, inconsistent or otherwise. It is therefore submitted that the Petitioner is entitled to obtain information under the RTI Act.

45. Section 7(5) of the RTI Act casts an obligation on public authorities to provide information upon the payment of “reasonable” fees. Further, the said provision grants a fee exemption to citizens who are below poverty. Pursuant to this provision, the government framed the Right to Information Rules, 2012 (hereinafter referred to as ‘RTI Rules’) which, prescribes a mere Rs.10/- (Rupees Ten Only) for filing a request under the RTI Act, and then permits the photocopying of documents (including certified copies) for a very affordable amount of Rs. 2 (Rupees Two Only) per page. It bears noting that there is no distinction between the fee payable for a regular photocopy or a certified copy. Furthermore, the Rules do not require any fees for inspection of documents for the first one hour of such inspection. The following table captures the fees prescribed under the RTI Rules:

Rule	Inspection	Photocopy	Certified copies
RTI Rules, 2012	No fees for first one hour	Rs. 2	Rs. 2

INADEQUACIES IN THE PATENTS ACT & RULES VIS-À-VIS RTI ACT

46. The Patents Act and Rules provides access to public information only to the extent provided in any provision or prescribed by the Central Government. As described in paragraphs 24 to 36, the existing framework under the Patents Act provides for access to a limited range of information and does not cover the *entire* gamut of public information held by Respondent No. 2, thereby leaving the public at the mercy of Respondent No. 2.

47. The Patents Act and Rules have conferred unbridled powers to frame the procedure for inspection and obtaining copies of public records. Consequently, the procedure adopted by the Respondent No. 2 is arbitrary, devoid of any procedural safeguards, lacks an effective grievance redressal mechanism, discourages the public from seeking information and imposes an unduly high cost of access to information.
48. Unlike the RTI Act, the Patent Act and Rules do not guarantee a time bound delivery of information to a member of the public making a request. As stated above, an application of the Petitioner to the IPO at New Delhi received no reply even after the expiry of five (5) months from the date of filing. This causes significant prejudice to the rights and interests of the Petitioner in furthering the work he does to promote public interest and transparency in field of Indian IP.
49. There is neither an appellate mechanism nor any grievance redressal mechanism under the Patents Act for any complaint pertaining to the wrongful act of any patent authority tasked with supplying information at the first instance. Furthermore, the Patents Act provides no remedy against the refusal or delay in providing information or the provision of false/misleading information or any other infirmities in information dispensation. The Petitioner has no choice but to invoke the writ jurisdiction of courts to obtain a remedy against deficiencies in the supply of information,

thereby causing immense hardship to the rights and interest of the Petitioner, and members of the public at large.

50. The Patents Act has conferred unbridled powers on Respondents in prescribing fees for the inspection and disclosure of information. As a result, the Respondents imposes exorbitant fees on members of the public who wish to access public documents. In fact, the Respondents recently hiked the prescribed fees for obtaining information *vide* Patents (Amendment) Rules, 2013. The following table provides fees for inspection, photocopying and obtaining certified copies of public documents under the recently revised Patents Rules as published in Gazette of India dated 28.02.2014:

Particulars	Electronic Copies			Physical Copies		
	Natural Persons	Small Entities	Others	Natural Persons	Small Entities	Others
Certified copies u/s. 72 & 147	Rs. 1,000 (upto 30 pages &Rs. 30/- per page thereon	Rs. 2,500 (upto 30 pages &Rs. 75/- per page thereon	Rs. 5,000 (upto 30 pages &Rs. 150/- per page thereon	Rs. 1,100 (upto 30 pages &Rs. 30/- per page thereon	Rs. 2,750 (upto 30 pages &Rs. 75/- per page thereon	Rs. 5,500 (upto 30 pages &Rs. 150/- per page thereon
Inspection u/s. 72 & Rule 27 &74A	Rs. 320/-	Rs. 800/-	Rs. 1,600/-	Rs. 352/-	Rs. 880/-	Rs. 1,760/-
Information u/s. 153 & Rule 135	Rs. 480/-	Rs. 1,200/-	Rs. 2,400/-	Rs. 528/-	Rs. 1320/-	Rs. 2640/-
Photocopying Fees	Rs. 8/-	Rs. 8/-	Rs. 8/-	Rs. 8/-	Rs. 8/-	Rs. 8/-

True copy of the Gazette Notification of Patents (Amendment) Rules, 2013 is annexed herewith as **ANNEXURE P-9**.

51. It is submitted that the fees prescribed above are exorbitant and devoid of any reasonableness. It appears that the Respondents have viewed access to public documents as a profitable enterprise, and that the entire scheme appears to be framed with a view to discouraging ordinary citizens from seeking information. In one such instance, the Respondent No. 2 demanded a fees of Rs. 1,04,000/- (One Lakh Four Thousand Rupees) for supplying certified copies of 26 documents, at Rs. 4,000 (Four Thousand Rupees) per document. The aforesaid actions of Respondent No. 2 has been challenged as unfair, unlawful, arbitrary and contrary to general public interest and welfare in *Polymedicure Ltd. v. Union of India & Others*, W.P. (C) No. 5480 of 2010, currently pending before this Hon'ble Court.

52. Contrast this with the RTI Rules which imposes a fee for Rs. 10/- for filing a request for information. And thereafter a simple sum of Rs 2 per page copy, irrespective of whether or not the copy is a simple photocopy or a certified copy. Viewed in this light, the charges under the Patent Act of a whopping Rs. 4000/- (Four Thousand Rupees) per single certified copy (even of a single page) is clearly exorbitant and atrocious. Furthermore, the RTI frame work does not make any distinction between natural persons, small entities and the rest in calculation of fees. The table below summaries the fees schedule under the RTI Rules:

Rule	Inspection	Photocopy	Certified copies
RTI Rules, 2012	No fees for first one hour	Rs. 2	Rs. 2

53. The Petitioner submits that various legislations dealing with IP laws enacted prior to the RTI Act have provisions similar to the Patents Act for inspection and obtaining copies of documents from government agencies tasked with administering the respective intellectual property in question. The table below highlights and summarizes this information:

Legislation	Relevant Provisions
Designs Act, 2000	Section 26 <i>[Inspection of and extracts from registers]</i>
Trade Marks Act, 1999	Section 148 <i>[Documents open to public inspection]</i>
Geographical Indications of Goods (Registration & Protection) Act, 1999	Section 78 <i>[Documents open to public inspection]</i>
Copyright Act, 1957	Section 47 <i>[Form and inspection of register]</i>
Protection of Plant Varieties and Farmers' Rights Act, 2001	Section 84 <i>[Documents open to public inspection]</i>
Semiconductor Integrated Circuits Layout-Design Act, 2000	Section 87 <i>[Documents open to public inspection]</i>

54. Similar to the Patents Act, the above IP legislations have also conferred unbridled powers on the Central Government to frame rules for the dispensation of information. In addition to the lack of procedural safeguards such as a robust redressal mechanism for denying information or supplying wrong information, the authorities have misused their delegated powers by imposing exorbitant fees for access to public

documents. The following table provides fees for inspection, photocopying and obtaining certified copies of public documents under various IP Rules:

Rule	Inspection	Photocopy	Certified copies
Designs Rules, 2001	Rs. 500	NA	Rs. 500 per design
Trade Marks Rules, 2002	Rs. 200 per hour	Rs. 5 per page	Rs. 500 per mark
Geographical Indications of Goods (Registration & Protection) Act, 1999	Rs. 100 per hour	Rs. 10 per page	N.A.
Copyright Rules, 1958	N.A.	Rs. 20 per work	Rs. 20 per work
Protection of Plant Varieties and Farmers' Rights Rules, 2003 (as per public notice on proposed amendments to Second Schedule of PPV&FR Rules, 2003)	Rs. 500	N.A.	Rs. 20/- per page (or Rs. 50/- per page to be provided in one day)
Semiconductor Integrated Circuits Layout-Design Rules, 2001	N.A.	N.A.	1,000

QUESTION(S) OF LAW

55. The instant petition requests this Hon'ble Court to decide whether or not a mechanism for obtaining information enacted in a legislation prior to the RTI Act overrides the provisions of the RTI Act and rules made thereunder?

POSITION OF LAW

56. It is submitted that the Central Information Commission ('CIC') in the matter of R. S. Mishra v. CPIO, Supreme Court of India, CIC/SM/A/2011/000237/SG/12351 decided on 11.05.2011, held that it is the citizen's prerogative to decide whether to follow the RTI Act or a pre-existing information

dispensation mechanism under another legislation. A copy of the abovementioned order of the CIC dated 11.05.2011 is annexed herewith as **ANNEXURE P-10**. The abovementioned order came to be challenged before this Hon'ble Court in W.P. (C) No.3530 of 2011 and the same is still pending.

57. Meanwhile, this Hon'ble Court in the case of *Registrar of Companies & Others v. Dharmendra Kumar Garg & Another*, being W.P. (C) 11271 of 2009, held that the RTI Act is inapplicable to information that is already in the 'public domain' by virtue of a pre-existing information dispensation mechanism under other another legislation (in this case the Companies Act, 1956).The subject matter of the dispute [W.P. (C) 11271 of 2009] involved appeals against Decision Nos.CIC/SG/C/2009/000702/4128 and CIC/SG/C/2009/000753/4129 dated 14.07.2009 passed by CIC, against the Registrar of Companies (hereinafter referred to as 'ROC') relating to the disclosure of information under the Companies Act. The said decision has been relied upon by Respondent No. 2 in denying request for information by the Petitioner under the RTI Act. The Petitioner humbly submits that the said decision in W.P. (C) No. 11271 of 2009 is erroneous, wrong in law and contrary to public policy. A copy of the order passed is produced herewith as **ANNEXURE P-11**.

58. By virtue of Section 610 of the Companies Act and Rules made thereunder, any person can inspect and obtain extracts from the Register of Companies maintained by the ROC. The Respondents [in W.P. (C) No. 11271 of 2009] contended that

Section 22 of the RTI Act is applicable only when there are ‘inconsistencies’ between both the legislations (i.e. the RTI Act and Companies Act). The judgment found in their favour held in pertinent part that:

“...Firstly, I may notice that I do not find anything inconsistent between the scheme provided under Section 610 of the Companies Act and the provisions of the RTI Act. Merely because a different charge is collected for providing information under Section 610 of the Companies Act than that prescribed as the fee for providing information under the RTI Act does not lead to any inconsistency in the provisions of these two enactments.....”

59. The Petitioner humbly begs to differ with the above finding as it did not fully examine the stark differences between the information dispensation frameworks under the RTI Act and the Companies Act, and therefore found no inconsistency between the provisions of the RTI Act and the Companies Act. The differences are outlined below:

A. Constitutional Right to Information: The RTI Act provides a speedy and effective framework for citizens to avail of their constitutional right to information. The Act imposes an obligation on public authorities to disclose all information unless the subject matter is categorically exempted from disclosure under the RTI Act or the Official Secrets Act, 1930. Furthermore, the information would cease to be exempted, if 20 years have lapsed since the occurrence of the incident to which the

information relates. Under the Companies Act, however, Section 610 provides a statutory right for obtaining a limited set of information pertaining to companies registered under the Act. Contrast this with the RTI Act, under which the entire gamut of public information held by the ROC would have been available. Illustratively, queries pertaining to comments or decisions of the ROC in relation to any company are not covered under the information dispensation mechanism envisaged under the terms of the Companies Act and Rules thereunder.

B. Time bound delivery of public information: The RTI Act imposes an obligation on public authorities to disclose information in a timely manner. Section 7(1) of the RTI Act categorically stipulates that the CPIO or a State Public Information Officer (hereinafter referred to as 'SPIO')(collectively 'PIOs'), shall expeditiously dispose of requests for information and that this shall not exceed more than 30 days from the date of receipt of the request. Furthermore, information pertaining to the life or liberty of a person has to be furnished within forty-eighty (48) hours from the receipt of the request. On the other hand, the Companies Act and the Rules enacted thereunder do not provide for any time-bound delivery of information. The information could be provided in a months' time or even after a year.

C. Rights-based grievance redressal mechanism: The RTI Act contains an extremely effective rights-based grievance redressal mechanism. If the PIO fails to

provide information within the prescribed time limit or the Applicant is not satisfied with the information provided, he/she may prefer an appeal before an officer senior in rank to the PIO designated as the First Appellate Authority (hereinafter referred to as 'FAA'), within 30 days from the date of refusal or the order of the PIO, as the case maybe. If the applicant is not satisfied with the decision (or indecision) of the FAA, he/she can further appeal to the CIC or the State Information Commission (hereinafter referred to as 'SIC'), as the case maybe, within 90 days from the date on which decision should have been made by the FAA or was actually received by the Appellant. Contrast this with the Companies Act that does not provide for any such grievance redressal mechanism to cure infirmities arising out of information requests. It effectively permits the ROC and other functionaries to take requests for information lightly.

D. Penalties: Section 20 of the RTI Act is a powerful provision under which the CIC and SIC can impose penalties on PIOs who, without reasonable cause, are found to have:

- i. refused to receive an application for information, or
- ii. have not furnished information within the time specified, or
- iii. mala-fidely denied the request for information, or
- iv. knowingly given incorrect, incomplete, or misleading information, or

- v. destroyed information which was the subject of the request, or
- vi. obstructed in any manner in furnishing the information.

Furthermore, the CIC may also impose a penalty of upto Rs. 25,000 on the PIO, if the actions or inactions of the PIO are found to be in contravention of Section 20 of the RTI Act. The Companies Act, on the other hand, does not impose any penalty in case of any irregularities or lapses in furnishing public information, causing public functionaries to take their obligation of providing access to information rather lightly.

E. Reasonableness in imposition of fees: Section 7(5) of the RTI Act casts an obligation on public authorities to provide information upon payment of fees that are 'reasonable'. Further, the provision exempts citizens who are below the poverty line from payment of any fees for obtaining information. On the other hand, the Companies Act does not cast any obligation to only charge fees that are 'reasonable' fees, nor does it afford any exemption or reduced rates for marginalized class of citizens who cannot afford the regular fees.

From the above, it is evident that unlike the RTI Act, the Companies Act lacks a robust and effective mechanism for processing information requests in a timely manner. Further, it does not provide any rights based grievance redressal

mechanism for aggrieved members of the public who are provided no information or faulty information. These serious deficiencies in the information dispensation framework envisaged under the Companies Act lead to relevant public authorities (in this case the ROC) taking their obligation to provide access to information rather lightly. In the case at hand, it is submitted that the Patents Act and other IP legislations listed in the table above are similar to provisions of the Companies Act in that it does not provide any procedural safeguards to a member of the public requesting timely access to information.

60. On the basis of the erroneous finding above, the decision W.P. (C) 11271 of 2009 further held that the RTI Act cannot abrogate the pre-existing mechanism under Section 610 of the Companies Act as the latter is a special legislation. In pertinent part, it was held:

“....The RTI Act is a general law/enactment which deals with the right of a citizen to access information available with a public authority, subject to the conditions and limitations prescribed in the said Act. On the other hand, Section 610 of the Companies Act is a piece of special legislation, which deals specifically with the right of any person to inspect and obtain records i.e. information from the ROC. Therefore, the later general cannot be read or understood to have abrogated the earlier special law....

The Petitioner humbly submits that the above rationale is erroneous.

61. Section 22 of the RTI Act in express unambiguous terms stipulates that the provisions of the Act have an overriding effect over any other legislation, to the extent that there is inconsistency between them. This position holds good, irrespective of whether or not the said inconsistent legislation is a general or a special legislation. The above paragraphs more than amply demonstrate that there is considerable inconsistency between the provisions of a highly effective citizen friendly RTI Act on the one hand and other prior legislations such as the Companies Act and the Patents Act on the other where the information dispensation mechanism is far costlier and more burdensome to access than the RTI Act. Furthermore, one of the objectives of the RTI Act was to cure infirmities in access to public information due to inadequacies in pre-existing legislations. Therefore, it is stated that the RTI Act is a *special* legislation dealing with securing and safeguarding a citizen's constitutional right to information. In the light of this, it is submitted that the information dispensation mechanism under the Patents Act and other IP legislations are inconsistent with the RTI Act. Therefore, under the terms of Section 22 of the RTI Act, the said Act must prevail.

62. Further, the Petitioner submits that the decision in W.P. (C) 11271 of 2009 erroneously found that the information provided under the Companies Act does not fall within the ambit of the 'right to information' defined under Section 2(j) of the RTI Act, since the information was already in the public domain. The court ruled that the Companies Act

mandatorily provided for the inspection and reproduction of documents and that information was available on the website of the ROC. Therefore, it has been held that such information fell outside the scope of information 'held by or under the control of the public authority', a necessary pre-requisite for the application of the RTI Act. In pertinent part, (Paragraph 33) the Court held that:

“...[Section 2(j)] ... cannot mean that information which the public authority has already ‘let go’, i.e. shared generally with the citizens, and also that information, in respect of which there is a statutory mechanism evolved, (independent of the RTI Act) which obliges the public authority to share the same with the citizenry by following the prescribed procedure, and upon fulfillment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, it cannot be said that the public authority ‘holds’ or ‘controls’ the same. There is no exclusivity in such holding or control.....”

63. The Petitioner humbly submits that the above reasoning is flawed and contrary to public policy. Section 2(f) of the RTI Act, in unambiguous terms, includes information “relating to private body which can be accessed by a public authority under any other law for the time being in force.” Therefore, all records relating to companies submitted to the ROC as per the Companies Act falls squarely within the scope of the RTI Act, notwithstanding Section 610 of the Companies Act.
64. Merely because information is accessible by citizens under the terms of a particular statute does not mean that the

particular information is no longer “held by the public authority” under Section 2(j). If this were the case, the same logic would apply to the RTI Act itself, rendering it redundant. For every information that is potentially accessible under the terms of the RTI ceases to be “information held by a public authority”. Further, the RTI Act empowers every citizen to seek information in any form including diskettes, floppies, tapes, video cassettes or in any other electronic mode. Therefore, if a public document is only available on the website, a member of the public could insist that physical copies of said document be provided to him/her under the terms of the RTI Act. Therefore, merely because the information is available on a website of the ROC does not mean that such information ceases to be information held by the public authority.

65. Furthermore, the RTI Act empowers citizens to obtain certified copies of public documents. Section 76 of the Evidence Act pertaining to certified copies of public documents reads as follows:

“76. Certified copies of public documents.- Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever

such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation: Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.”

From the above, it is clear that certified copies can be issued only by the public authority having custody of the document. The *Explanation* to Section 76 of the Evidence Act clarifies that the person authorized to deliver copies is deemed to have custody of such documents. Therefore, the mere fact that the information is available on a website does not mean that the documents are not under the custody of the public authority.

66. In any case, as noted earlier, the range of information available on the ROC website is limited and unlike the RTI Act, does not include the entire gamut of information typically held by authorities working under the broad rubric of the Companies Act. Illustratively, extracts from the ROC website cannot be considered as certified copies as per Section 76 of the Evidence Act.
67. For the reasons enumerated in paragraphs 54 to 64 above, the Petitioner humbly submits that the decision is erroneous in law and contrary to the spirit of the constitutional mandate of the public's right to know and is hence liable to be set aside. Consequently, the denial of information by

Respondent No. 2 by placing reliance on the decision passed in W.P. (C) No. 11271 of 2009 is illegal. The Petitioner therefore prays for appropriate relief from this Hon'ble Court.

68. As there has arisen a substantial question of law, due to these developments in the interpretation of various provisions of the RTI Act *vis-à-vis* the provisions of the various IP legislations and Rules, the Petitioner is before this Hon'ble Court to seek a determination on the said issue. But for this route, the Petitioner would be constrained to file individual appeals in each case, thereby frustrating their rights.
69. Being aggrieved by and/or dissatisfied with the impugned actions of the Respondent authorities, the Petitioner prefers the present petition inter alia on the following grounds

GROUND

- A. That the RTI is a fundamental right guaranteed by the Constitution of India to all citizens. The Constitutional Bench of the Supreme Court in *S.P. Gupta & Others v. President of India* [AIR 1982 SC 149] held that:

“...The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must

be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest...”

- B. That the Parliament enacted the RTI Act to further the constitutional goal of securing the right to information of the public. The RTI Act, therefore, envisages maximum disclosure of information with minimum exemptions. In other words, the public authorities are merely guardians of public information and therefore obliged to provide any information (unless exempted) to citizens on request. The relevant provisions under the IP legislations, particularly the Patents Act, exclude very important patent information from its ambit, impose higher fees than the RTI and do not make any carve outs for those with poor financial means. Therefore, the provisions of the Patents Act and other IP legislations are thoroughly inconsistent with the scheme and object of the RTI Act and contravene the constitutional mandate to promote easy and affordable access to government information.
- C. That a request for information cannot be rejected unless the information sought is exempted under Sections 8 and 9 of the RTI Act. That the Patents Act and other IP legislations on the other hand, permit disclosure of only limited public information prescribed by the Central Government and therefore inconsistent with the RTI Act.
- D. That the RTI Act is a complete code in itself and provides for a definitive mechanism to provide all public information with

procedural safeguards including an appellate mechanism and powers to impose penalties for non-compliance. The Patents Act and other IP legislations on the other hand confer unbridled and arbitrary powers by delegating the powers to Respondent No. 1 prescribe the manner of obtaining public information. Furthermore, the Patents Act and other IP legislations are devoid of any dispute redressal mechanism and therefore inconsistent with the RTI Act.

- E. That the RTI Act imposes an obligation on the public authorities to disclose information in a time bound manner. On the other hand, the Patents Act and other IP legislations and the Rules thereunder do not provide for such time-bound delivery of information. The Respondents can take their own time in providing information, many a time rendering the request redundant, as has happened with the Petitioner in an instance outlined earlier.
- F. That the RTI Act envisages a rights-based grievance redressal mechanism against grievances arising out of seeking information, including failure to provide information, by conferring a right to appeal before a quasi-judicial body, i.e. the CIC or SIC, as the case maybe. On the other hand, the Patents Act and other IP legislation does not provide for any grievance redressal mechanism to cure infirmities arising out of information requests.
- G. That the RTI Act prescribes penalties against public authorities for a *mala fide* refusal or denial of public information. The Patents Act and other IP legislations on the

other hand, do not provide any such penalties against errant public authorities and therefore inconsistent with the RTI Act.

- H. That Section 22 of the RTI Act in unambiguous terms states that the provisions of the RTI Act shall have an overriding effect over pre-existing mechanisms inconsistent with the RTI Act. The insertion of the provision suggests that the Parliament intended to cure infirmities in pre-existing mechanisms in providing easy, effective and affordable access to information. Therefore, the non-acceptance of applications under the RTI Act on grounds of pre-existing mechanisms is illegal.
- I. That the information dissemination mechanisms established by Respondents is inconsistent with the RTI Act and nature of inconsistencies are same as the ones submitted in paragraph 57(above). Therefore, by virtue of Section 22, the pre-existing mechanism established by Respondents cannot override the RTI Act.
- J. That the pre-existing mechanism under the Patents Act and other IP legislations are repugnant to the RTI Act and that both cannot co-exist without prejudicing the rights and interests of citizens. Therefore, the relevant provisions under various Patents Act and other IP legislations stands abrogated by virtue of clear intention expressed in Section 22 of the RTI Act.
- K. That the pre-existing mechanisms under the Patents Act and other IP legislations are arbitrary, illegal and *ultra vires*

Articles 14, 19(1)(a), 19(1)(g) and 21 of the Constitution inasmuch as it fails to safeguard the constitutional guarantee of right to information.

- L. That the scope of 'information' as per Section 2(f) of the RTI Act extends to public records already available in the public domain. Therefore, the rejection of application under the RTI Act on grounds that the information is available in public domain is illegal.
- M. That the scope of 'right to information' as per Section 2(j) of the RTI Act entitles citizens to obtain information 'held by' or 'under the control' of Respondents. Therefore, the non-acceptance of applications under the RTI Act on grounds of a pre-existing mechanism is illegal.
- N. That Section 144 of the Patents Act violates Articles 19(1)(a) and 19(1)(g) of the Constitution of India inasmuch as it unreasonably and arbitrarily prohibits public access to Examiner reports without any justifiable end.
- O. That Section 144 of the Patents Act is contrary to provisions of the RTI Act and is therefore liable to be struck down. It is stated that a request for information can be rejected only if the information falls under any of the exemptions specified under Sections 8 and 9 of the RTI Act. It is denied that the report of the examiner falls under any of the categories of exempted information under the RTI Act. It is further denied that the information relates to commercial confidence or trade secrets or intellectual property or harms the competitive position of a third party or any other.

- P. That the delegated powers under various IP legislations give unbridled powers to the Respondents to impose exorbitant and unreasonable fees for providing information. If the Government at the time of enacting the RTI Rules consciously decided to provide all public documents at Rs.2/- per page, there is no reason for prescribing different fees for specific information without any rational basis.
- Q. The Petitioner denies that processing applications under the RTI Act would disproportionately divert resources of the public authority in question. On the contrary, a single system for dissemination of public information through the RTI Act is administratively more convenient, efficient and cost friendly even for the public authority.
- R. That the above IP Rules discourage citizens from seeking public information which is a constitutional guarantee. It is unfortunate that Respondents have viewed a citizen's access to public records as a profitable enterprise.
- S. That with the exclusion of the RTI Act, public authorities will be able to prescribe arbitrary fees for obtaining information and could even keep raising the fees year after year (as is the case with Respondent No. 2 herein) thereby frustrating the constitutional guarantee of right to information. The method adopted poses a hurdle to the RTI mechanism and frustrates the citizen's right to obtain information.
- T. That the RTI Act provides an easy, affordable and definitive access to information from the public authorities in order to

ensure transparency and accountability in the working of every public authority for promoting a corruption free, efficient and accountable Government. The need for the RTI Act stands defeated if the RTI Act is held inapplicable either due to presence of pre-existing mechanism for obtaining information or with respect to information which is already in 'public domain' by virtue of a pre-existing mechanism.

- U. It is submitted that the RTI Act is a comprehensive piece of legislation with adequate procedural safeguards to provide information to citizens. The other mechanisms prior to the RTI Act do not adequately safeguard citizens' constitutional right to information. In the interest of equity, fairness and justice, the RTI Act should prevail. In a nutshell, in letter and spirit of its 'Statement and Objects and Reasons', the RTI Act is a special legislation to "provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, to promote transparency and accountability in working of every public authority, the constitution of a Central Information Commission and State Information Commission and for matters connected therewith or incidental thereto." On the other hand, the relevant provisions under the IP legislations appear to be structured with a view to making it more difficult to obtain information.
- V. That there is no provision or procedure under the Patents Act and Rules that entitles the Petitioner or any person to obtain public information submitted as per Section 146(2) read with

Rule 131, which is held by and under the control of Respondent No. 2.

- W. That the actions of Respondent No. 3 are patently wrong, illegal and arbitrary inasmuch as the rejection of applications filed under the RTI Act by the Petitioner is concerned, on the grounds that there exists a pre-existing mechanism under the Patents Act.
- X. That the undated Public Notice issued by the IPO at New Delhi is illegal, arbitrary and *ultra vires* the RTI Act.
- Y. That the actions of the CPIOs of IPO at Mumbai and Kolkata are patently wrong, illegal and arbitrary, inasmuch as they initially treated the applications filed by the petitioners as applications under the RTI Act (for which application fees under the RTI Act would apply) and then went on to provide information under the terms of the Patents Act and Rules. There is no provision or mechanism, in either the RTI Act or the Patents Act or Rules thereunder made respectively, that permits this inconsistent dichotomy. If a statute prescribes a manner in which an action is to be done, it ought to be done in such manner as prescribed under the statute.
- Z. That there is a pressing need for judicial intervention in connection with this egregious infirmity and the Hon'ble Supreme Court of India as well as this Hon'ble Court have often intervened, even in issues of public policy making, to fill the lacuna and provide redressal on public issues where there has either been a failure on the part of authorities or general inadequacy in law.

- AA. The actions of the Respondents violate the fundamental rights of the Petitioner herein enshrined in Article 14, 19 and 21 of the Constitution of India.
- BB. For that there is no mechanism for obtaining public information enacted prior to the RTI Act and Rules which overrides the provisions of the latter i.e. the RTI Act.
- CC. For that the judgment of this Hon'ble Court in *Registrar of Companies & Others v. Dharmendra Kumar Garg & Another*, W.P. (C) 11271 of 2009 is erroneous for the reasons enumerated above and hence is liable to be set aside.
- DD. The Petitioner craves the leave of this Hon'ble Court to urge additional grounds at the time of hearing.
70. The petitioner has no other alternative or equally efficacious remedy available other than the present Writ petition.
71. The Respondent authorities are acting in a manner contrary to law, fair play, natural justice and equity and are only attempting to victimize the petitioner. The actions of the respondent authorities are illegal and malafide and are thus liable to be set aside.
72. The Petitioner has no other alternative, efficacious remedy other than the one provided under Article 226 of the Constitution of India. The Petitioner has not filed any other writ, petition, application before this Hon'ble Court or any other forum against the same cause of action. There are no other legal proceedings pending in connection therewith.

73. The balance of convenience is in favour of the petitioner and the petitioner is likely to succeed on merits.
74. The petitioner reserves the right to add, alter, amend the contents of the present petition and file such other application as may be required in the *bonafide* interest of justice.

PRAYER

In the facts and circumstances explained herein above and in the interest of justice it is, therefore, prayed that this Hon'ble Court may be pleased to:-

- i. Issue a writ of *Mandamus*, or any other appropriate writ, order or direction directing Respondent No. 2 and Respondent No. 3 to provide information to the Petitioner in relation application dated 10.12.2013 filed under the Right to Information Act, 2005 before the IPO at New Delhi;
- ii. Issue a Writ of *Mandamus*, or any other appropriate writ, order or direction quashing the reply of Respondent No. 3 dated 23.12.2013 rejecting the Petitioner's application dated 10.12.2013 filed under the Right to Information Act, 2005 due to the pre-existing mechanism under the Patents Act, 1970;
- iii. Issue a Writ of *Mandamus*, or any other appropriate writ, order or direction quashing the undated the Public Notice titled 'Information under Public Domain'

issued by Respondent No. 2 as illegal, arbitrary and *ultra vires* the Right to Information Act, 2005;

- iv. Issue a writ of *Mandamus*, or any other appropriate writ, order or direction directing Respondent No. 2 to entertain all applications for access to information under the RTI Act and provide the information sought under the terms of the RTI Act and not as per the Patent Act and Rules;
- v. Hold and declare that the mechanism under the Right to Information Act, 2005 overrides all other mechanisms under any other statute or rule for discharge of information from public authorities to the extent of inconsistencies therein;
- vi. Hold and declare that Section 144 of the Patents Act, 1970 is *ultra vires* the Constitution of India;
- vii. Pass any other further order/direction as this Hon'ble Court may deem fit.

Through ... Petitioner

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Development Area,
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Place: New Delhi
Date: 27.05.2014