

IN THE HIGH COURT OF DELHI AT NEW DELHI

(Extraordinary Writ Jurisdiction)

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF A PUBLIC INTEREST LITIGATION

SHAMNAD BASHEER ... PETITIONER

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENTS

WITH

**C.M. NO. OF 2015 : Exemption from filing certified, dim,
typed & margin copies of documents**

PAPER BOOK

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FILED BY:

Date : 21.05.2015

Place : New Delhi

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SYNOPSIS

The Writ Petition is being filed in public interest to seek an appropriate writ or directions against the Respondent authorities to compel patentees and licensees to comply with the statutory mandate to declare information on the working of their patents, as per the Patents Act, 1970 & Rules thereunder.

Section 146(2) of the Patents Act, 1970 read with Rule 131 of the Patent Rules, 2003 compels every patentee and her licensee to make an annual disclosure as to how far and to what extent they have commercially worked their patent. The format for this mandatory disclosure is prescribed under Schedule II of the Patents Rules as 'FORM-27'.

The Petitioner conducted an extensive survey of patent working in three critical areas (a) pharmaceutical drugs (lifesaving drugs for fatal diseases such as Cancer, AIDS, Diabetes and Hepatitis); (b) telecommunications; and (c) publicly funded research and development.

The survey revealed a blatant disregard for an important statutory mandate, with close to 35% of the patentees failing to disclose their patent working status during 2009 to 2012. Even among those patentees that purported to make this disclosure,

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the said disclosures were highly defective, inasmuch as they were either incomplete, negligent or incomprehensible.

More worryingly, the Respondents authorities have never initiated action against any of the errant patentees. What makes this government inaction even more egregious is the fact that the blatant non-compliance was already brought to the notice of the government four years ago through a similar investigation conducted by the Petitioner in a public report titled "*The 'Non-Working' of the Patent Office 'Working' Requirement!*"

This cavalier disregard for an important statutory mandate is particularly problematic, as patent working norms lie at the very heart of India's patent system. The Patents Act grants a twenty (20) year monopoly for inventions that are novel, non-obvious and useful. The grant of exclusionary "rights" are, however, not absolute, but comes with corresponding "duties" imposed on patentees to work their patented invention, as far as practicable, for the public benefit, by ensuring *inter alia* that patented products are available in adequate quantities and a reasonable price.

If the patentee fails to fulfill this important statutory mandate, the Act imposes a penalty in the form of a compulsory license, where third parties are given permission to manufacture and sell the drug for the benefit of consumers. If the compulsory licence also fails to fulfill this important public purpose, the patent could then be revoked. The compulsory licensing and revocation provisions will come to naught, if patent working information is not made readily available.

Besides this, courts routinely deny the grant of an equitable remedy (i.e., interim injunctions) when the patent has not been worked.

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A patent is effectively a fetter on the freedom of trade guaranteed under Article 19(1)(g) of the Constitution of India, as it blocks competitors from introducing their goods and services in the market. But for such competition, the consumer suffers, particularly in terms of affordable versions of patented medicines. Therefore, such fetter must be tolerated only when it is subject to reasonable safeguards such as ensuring that it is worked for the public benefit ensuring availability in reasonable quantities and at reasonable prices.

Patent working disclosure (as mandated by the Patents Act) is therefore a critical one underpinning the very essence of India's patent regime. The lack of such transparent disclosure will deny valuable information around patents and their commercial working to the larger public which is effectively suffering the monopoly. It will render the compulsory licensing and revocation provisions largely illusory, as without working data, it is impossible to determine whether a patentee has satisfied the reasonable requirements of the public, an important precondition for compulsory licensing and revocation. It will also make it difficult for honest competitors to assess their IP risks, whilst doing research and developing advanced technologies or products that are likely to be of great value to society. As a result, the rate of technological development and research is likely to be hampered. More worryingly, this detrimental impact on competitors will ultimately affect the general public, who are denied access to more affordable technologies, a concern most starkly felt in the context of medicines.

Lastly, it is humbly submitted the present format of the FORM-27 disclosure specified under the Patent Rules is wholly insufficient to fulfill the objectives of the Patents Act, inasmuch

as it lacks precision and fails to ask for several critical particulars that are necessary for an effective assessment of the commercial working of patented inventions. Without such working information, the compulsory licensing and revocation provisions will remain ineffective, and a failure to invoke them in appropriate cases will ultimately affect the general public, particularly in cases involving patented medicines and public health.

LIST OF DATES

- Sept' 1959** Shri Justice N. Rajagopala Ayyangar submits a report on the 'Revision of the Law in India Relating to Patents for Inventions' advocating strong norms for compulsory licensing and patent working. The Report also recommends the abolition of pharmaceutical product patents. The Report's key recommendations effectively form the blueprint for the Patents Act, 1970.
- 1970** The Parliament of India enacts the Patents Act, 1970, wherein pharmaceutical products are excluded from patentability. Further, the Act imposes a stringent patent working requirement and provides for a very elaborate compulsory licensing scheme. In particular, Section 146(2) of the Act imposes an obligation on rights-holder to furnish patent working information at regular intervals to the Controller of Patents.
- 2003** The Respondent authorities notify the Patents Rules, 2003, wherein Rule 131 [enacted in accordance with Section 146(2)] requires all

patentees and licensees to submit a statement on the commercial working of their patented invention each year as per the prescribed format specified as 'FORM-27'.

- 2005** The Parliament of India enacts the Patents (Amendment) Act, 2005, in order to comply with the Trade-Related Aspects of Intellectual Property Rights ('TRIPS'), an international treaty under the WTO framework to which India is party. Under this amendment, product patent protection is extended to pharmaceutical inventions.
- 24.12.2009** The Respondent authorities issue a Public Notice (Ref. No. CG/PG/2009/179) directing all Patentees to submit information on the commercial working of their patented inventions.
- April 2011** The Petitioner, along with his Research Assistant, publish a detailed report titled "*The 'Non-Working' of the Patent Office 'Working' Requirement!*" on SpicyIP, highlighting widespread non-compliance with the FORM-27 filing requirement by leading multinational pharmaceutical companies in relation to their patented drugs.
- 12.02.2013** The Respondent authorities issue yet another Public Notice (Ref. No. CG/PG/2013/77) directing Patentees to submit information on the commercial working of their patented inventions.

- 2013** The Respondent authorities digitize the FORM-27 filings and provide public access through an online searchable database. However this information is limited to FORM-27 filings for the years 2012 and 2013 alone.
- 10.12.2013** The Petitioner files RTI applications before various branches of Respondent authorities seeking details on actions taken under Section 122 of the Patents Act against errant patentees for failing to comply with the FORM-27 filing requirement [as specified in Rule 131 read with Section 146(2)].
- 23.12.2013,
09.01.2014 &
30.01.2014** The Respondent authorities, in reply to RTI applications dated 10.12.2013, state that no action has so far been initiated under Section 122 of the Act against any errant right-holders for failure to submit patent working information.
- 21.05.2015** Hence, the present Writ Petition.

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MEMO OF PARTIES

Shamnad Basheer

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C/o Spire, No. 45, 2nd Floor,
Jubilee Building, Museum Road,
Bangalore - 560 025

... PETITIONER

VERSUS

1. Union of India

Through the Secretary,
Ministry of Commerce & Industry,
Udyog Bhawan
New Delhi - 110001

... RESPONDENT NO. 1

**2. Controller General of Patents,
Design and Trademark**

The Patent Office
Baudhik Sampada Bhawan,
S.M. Road, Near Antop Hill
Mumbai - 400 037

... RESPONDENT NO. 2

3. Controller of Patents and Design

The Patent Office,
Baudhik Sampada Bhawan,
Plot No. 32, Sector 14 Dwarka,
New Delhi - 110 075

... RESPONDENT NO. 3

FILED BY:

Date : 21.05.2015

Place : New Delhi

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**A CIVIL WRIT PETITION IN PUBLIC INTEREST UNDER
ARTICLE 226 OF THE CONSTITUTION OF INDIA**

To

THE HON'BLE CHIEF JUSTICE OF THE
HIGH COURT OF DELHI AND
HIS COMPANION JUSTICES OF
THE HIGH COURT OF DELHI

The Petitioner respectfully
submits as under:

1. That the Petitioner is filing this present Writ Petition in public interest under Article 226 of the Constitution of India seeking a writ of *mandamus* or any other appropriate writ or directions, to compel Respondent authorities to:
 - i) Perform their statutory duty under the Patents Act, 1970, to enforce norms relating to the disclosure of “commercial working” of patents by patentees and licensees as per Section 146 read with Rule 131 of the Patents Act and Rules, and
 - ii) Constitute an expert committee to improve the current format for patent “working” disclosure, as the present format is irrational and grossly insufficient to fulfill the objectives of the Patents Act.

2. The Petitioner is a citizen of India. The Petitioner has no personal interest in the litigation and 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. There is no motive other than of public interest in filing the Writ Petition.
3. The Petition, if allowed would benefit the citizens of India as it is aimed at improving transparency and accountability in the patent system which is critical for innovation, technological progress and public well-being. The Petition is being filed *bona fide* in public interest for the benefit of all persons. Since these persons are numerous and have no personal interest in the matter, hence they are unlikely to approach this Hon'ble Court. 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.
4. The Petitioner has based this Writ Petition from authentic information and public documents sourced from the Respondent authorities through requests under the Right to Information Act, 2005 ('RTI Act'), Reports of Parliamentary and other Government-appointed committees, articles of eminent scholars and other publically available information made available by Respondent authorities.
5. Respondent No. 1 is the Secretary to the Union of India, Ministry of Commerce and Industry. Respondent No. 2 is the Controller General of Patent, Designs & Trade Marks ('CGPDTM'), a statutory functionary appointed under Section 3 of the Trade Marks Act, 1999. Respondent No. 2

is also the Controller of Patents administering the Indian Patent Office ('IPO') under Section 73 of the Patents Act, 1970. The Respondent No. 3 is one of branches of the IPO, i.e. Respondent No. 2, located 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.

6. The Petitioner is a reputed scholar in Intellectual Property ('IP') law and policy with over fourteen (14) years of experience in this field. He 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. The Petitioner graduated from the National Law School of India University, Bangalore and did his Masters in Law (BCL), MPhil and DPhil from the University of Oxford as a Wellcome Trust Scholar. He is a recipient of the prestigious Infosys Foundation Prize for the year 2014 awarded by a jury headed by Nobel Laureate, Prof Amartya Sen, for his contributions to legal theory and practice, particularly in the area of intellectual property rights. The award citation by the jury commends his pioneering contributions in fostering a wider public engagement with the law (particularly intellectual property law) and in aiding access to legal education for the underprivileged.
7. In 2005, the Petitioner founded SpicyIP, a non-profit online portal (accessible at: www.spicyip.com) in order to make IP laws and policy making more transparent, open and inclusive through a rigorous analysis of legal developments, policies and institutions. He has

proactively intervened and assisted the courts in matters involving serious questions of law related to IP rights. Notably, the Petitioner assisted the Hon'ble Supreme Court in *Novartis v. Union of India* [(2013) 6 SCC 1] as an *intervener-cum-amicus* in the interpretation of Indian patent law. The scholarly writings of the Petitioner were also relied on by the Respondent authorities in its decision [C.L. No. 1 of 2011 dated 09.03.2012] to grant India's first ever compulsory licence in the post TRIPS era. A comprehensive list of Petitioner's public-spirited activities and contributions to law, legal education and intellectual property is annexed herewith as **ANNEXURE P-1**.

I. BACKGROUND

8. The Petitioner, along with his Research Associate and Research Assistants (collectively 'RAs'), sought to investigate the commercial working of certain patented inventions in India, particularly in relation to three key areas, namely:
 - (i) pharmaceutical drugs (particularly life-saving drugs for fatal diseases such as Cancer, AIDS, Diabetes and Hepatitis)
 - (ii) telecommunication technology and;
 - (iii) inventions stemming from public sponsored research and development. ('R&D').
9. To this end, the Petitioner examined the statements on "commercial working" submitted by patentees and licensees every year, as per Sub-section (2) of Section 146 read with Rule 131 of the Patents Act and Rules, in accordance with the prescribed format specified as

'FORM-27' under Schedule II of the Patent Rules (in short "FORM-27 filings').

10. Pursuant thereto, the Petitioner along with his RAs obtained FORM-27 filings of patents relating to 7 (seven) critical life-saving drugs. The information was obtained from Respondent authorities under the RTI Act after a lengthy and painstaking process, as the same was not available in the public domain. The filings revealed a blatant and widespread contravention of patent working disclosure norms by major pharmaceutical companies, such as Bristol-Myers Squibb, Schering Corporation and Pfizer Inc. A detailed report of the findings titled "*The 'Non-Working' of the Patent Office 'Working' Requirement!*" was published on SpicyIP in April 2011 and the same was widely reported by media. The report meticulously documented the hardships faced by the Petitioner in accessing the information. True copy of the said Report is annexed herewith as **ANNEXURE P-2**.
11. In a laudatory move, the Respondent authorities enabled free public access to FORM-27 filings in an online searchable database (URL: [ipindiaonline.gov.in/working patents/](http://ipindiaonline.gov.in/working_patents/)). The said database is, however, significantly limited as it contains the FORM-27 filings pertaining to the calendar year 2012 and 2013 alone, and not prior years (i.e. 2003 to 2011). A snapshot of the homepage of the said database as on 11.05.2015 is annexed herewith as **ANNEXURE P-3**.
12. Consequently, the Petitioner, through his RAs, queried the Respondent authorities on several occasions seeking copies of FORM-27 filings and the steps taken by

Respondent authorities in ensuring compliance with the statutory obligation by patentees and licensees. In addition, the Petitioner extensively surveyed FORM-27 filings retrieved from the aforesaid database. Overall, the survey spanned over 270 FORM-27 filings relating to 150 major patents across the three sectors mentioned earlier. A comprehensive list of patents surveyed by the Petitioner is annexed herewith as **ANNEXURE P-4**.

13. Shockingly, the survey revealed widespread contravention of FORM-27 filings norms by patentees. The Petitioner begs the attention of the Hon'ble Court to the arbitrary and cavalier attitude of Respondent authorities in failing to effectively enforce statutory provisions pertaining to public disclosure of patent "working" information, despite having full knowledge of the widespread contraventions in this regard.

II. STATUTORY BASIS OF PATENT WORKING INFORMATION

14. Under Section 146(1), the Controller of Patents (Respondent No. 2 herein) has the power to direct any patentee or licensee to furnish a statement on the extent of commercial working of their patent. Section 146(2) imposes an obligation on all patentees and licensees to submit a statement on commercial working of their patent at periodic intervals, as maybe prescribed. The Controller of Patents can publish such information in the prescribed manner, as per Section 146(3).
15. Rule 131 of Patents Rules, enacted pursuant to Section 146(2), obliges every patentee to disclose the true extent of commercial working of their patent, each year, as per the

format specified as 'FORM-27'. Furthermore, the provision authorizes the Controller to publish this information.

16. The format for FORM-27 is provided under the Second Schedule to the Patents Rules. The form requires patentees and their licensees to disclose the following particulars:
 - (a) whether the patented invention has been worked on a commercial scale within India for the year in question;
 - (b) if the patented invention is not worked, the reasons for such non-working;
 - (c) if the patented invention is worked, the rights-holder must:
 - i. specify the quantum and value of sale of product covered by the patent in India for the relevant year in question;
 - ii. specify the details of licences and sub-licences granted during the relevant year;
 - iii. state whether the patented invention is manufactured within the territory of India in the relevant year; and
 - iv. state whether the public requirement of the patented invention has been met either partly or adequately or the fullest extent at a reasonable price for the relevant year;
17. The Patents Act and Rules discussed above, in unambiguous terms, extend the disclosure mandate (i.e., FORM-27 filing) to Licensees as well. The objective behind extending this obligation to licensees was underscored by Justice N. Rajagopala Ayyangar in his Report on the *'Revision of the Law in India Relating to Patents for*

Inventions', which noted that the obligation on licensees is necessary to find out the true extent of commercial working of any patent, given that a number of patentees are prone to licensing out their patents to third parties who then commercially exploit them.

18. Lastly, Section 122(1)(b) authorizes the Respondent authorities to impose fines which may extend upto Rs. 10,00,000 (Ten Lakh Rupees) against errant patentees and licensees for failure to comply with the mandate provided under Section 146 of the Patents Act and Rules thereunder. The relevant provisions of the Patents Act, 1970 and Rules thereunder and format of FORM-27 declaration as prescribed under Schedule II of the Patents Rules, 2003 are reproduced below as **APPENDIX-A** and **APPENDIX-B**, respectively.
19. Apart from the above, patent working information is also provided by Patentees to other statutory authorities under mandatory financial reporting norms laid down in various commercial laws and regulations. Illustratively, two such statutory regimes are discussed below:
 - (a) **Companies Act, 2013:** As per Sections 129 and 137 read with Schedule III of the Companies Act, every company must submit a detailed Financial Statement along with the Auditor's Report each year to the Registrar of Companies. Such an exercise necessarily entails a reporting on the sales of patented products, licensing activities and other transactions arising out of patent rights.
 - (b) **Income Tax Reports & other tax-related filings:** Section 80RRB read with Rule 19AD of the Income

Tax Act, 1961 and Rules thereunder, permits patentees to claim deductions over royalty income and requires them to submit detailed information of their licensing practices in accordance with the format specified as FORM-10CCE. A copy of the said FORM NO. 10CCE of the Income Tax Act, 1961 and Rules thereunder is annexed herewith as **ANNEXURE P-5**.

III. MASSIVE DISCREPENCIES WITH PATENT WORKING DISCLOSURE

20. The Respondent authorities issued Public Notice(s) on at least three occasions (on 24.12.2009, 12.02.2013 & 21.01.2015) in the past to remind patentees of their statutory obligation to disclose patent working through filing FORM-27s for the respective years. True copy of the aforesaid notices dated 24.12.2009 (Ref. No. CG/PG/2009/79), 12.02.2013 (Ref. No. CG /PublicNotice/2013/77) and 21.01.2015 (Ref. No. CG/Public Notice/2015/95) are annexed herewith as **ANNEXURE P-6 (Colly)**.
21. Despite these repeated reminders, patentees and licensees failed to make the relevant disclosures and ignored this important statutory mandate with impunity. A summary of the survey undertaken by the Petitioner and his RAs reflecting this widespread statutory transgression is encapsulated below:

(A) NON-COMPLIANCE

22. The survey revealed a glaring non-compliance with the FORM-27 filing mandate. Approximately 35% of patentees did not bother to disclose any working information for the years 2009 to 2012. The year-wise breakup of patent

working disclosures sourced from Respondent No. 2, is reproduced below:

YEAR	PATENTS IN FORCE	FORM-27		% NON COMPLIANCE
		FILED	NOT FILED	
2009	37334	24009	13325	35.69
2010	39594	34112	5,482	13.84
2011	39989	27825	12,164	30.41
2012	43920	27946	15,974	36.37

Relevant excerpts from the Annual Report of the Controller of Patents, for the year 2012-13, is annexed herewith as ANNEXURE P-7.

(B) DEFECTIVE COMPLIANCE

23. Apart from the shockingly high number of patentees that simply failed to submit any FORM-27 disclosures at all, the survey found a significant number of defective declarations as well, i.e., FORM-27s that were submitted but were grossly incomplete, incomprehensible or inaccurate, as elaborated upon below:

(a) Refusal to declare: The obligation on the patentees to declare patent working information under Rule 131 as per the FORM-27 is *mandatory*. Ironically, Ericsson Inc., a leading patent holder in telecom sector, refused to disclose patent working information to the public under the alleged veil of trade secrecy. The relevant FORM-27 filings by them state that: “as all the licenses are confidential in nature, the details pertaining to the same shall be provided under specific directions from the Patent Office.” It bears noting that the FORM-27 filings for eight (8) of their patents investigated by the Petitioner are currently subject to anti-competitive

investigations by the Competition Commission of India ('CCI'). The refusal to declare commercial working information is illegal and liable for punishment as per Section 122 of the Patents Act. True copies of the said FORM-27 filings of Ericsson Inc., are annexed herewith as **ANNEXURE P-8**.

- (b) **Quantum and Value:** If a patent has been worked in a certain year, the FORM-27 declaration requires the Patentee to provide particulars, such as the quantity and value of the patented product imported or manufactured in India. Close to half of all patentees surveyed by the Petitioner and his RAs (40% approximately) failed to disclose these particulars. Few patentees even went to the extent of flippantly stating that: *"information not readily available. Information will be provided if asked for"*.

Further, FORM-27 filings provided by Ericsson Inc. (above) contains the overall sales of the company, instead of limiting it to the specific patented product in question, making it impossible to gauge the precise extent of working of the patent in question. It is submitted that there is a strong likelihood that some of these omissions are deliberate, with a view to escape public scrutiny of working of patents.

Several patentees in the telecom sector expressed their inability to disclose information pertaining to quantum and value of the patented product due to the *nature* of the invention. Illustratively, Motorola Mobility Inc. in relation to Patent No. 239197 stated that: *"Due to the nature of invention, it is not possible to*

determine the quantum and value of the above patented product or process.”

It is respectfully submitted that such statements appear to fly in the face of industry practice, given that patentees in this sector usually license their patents on Fair, Reasonable and Non-Discriminatory ('FRAND') terms to competitors. In a majority of licensing agreements, patentees typically insist on the right to audit the sales and revenues of their licensees' products, so as to foster an accurate reporting and payment of royalties. As such, the alleged difficulty in disclosing the quantum and value of products that comprise the patent may not comport with the reality of business practices and does not amount to an insurmountable hurdle. In any case, it is humbly submitted that it is a statutory mandate that must be complied with.

Further, even in so far as pharmaceutical patentees are concerned, there is gross failure to declare the value of products. Illustratively, in a FORM-27 filed in 2010 by Bayer, it does not indicate the value of the 4665 units that were imported in 2009. This column was left blank by the patentee, as evident from our investigation report.

- (c) **Non-working:** If the patent has not been worked in a certain year, the FORM-27 requires the Patentees to provide reasons for such non-working and the steps being taken to redress this non-working. Over 65% (i.e., 28 out of 42) of such FORM-27 filings either failed to address this query or provide a satisfactory

explanation thereof. A small fraction of patentees have callously ignored this question and left the column blank.

- (d) **Indeterminate quantity of the product:** The FORM-27 format requires Patentees to mention the quantity of the patented product, either manufactured or imported. A vast majority of the FORM-27 filings (close to 60% approximately) have provided the import or sales figures in vague or indeterminate units of measurement, thereby preventing a fair assessment of the quantum of working. Illustratively, a perusal of FORM-27 filed in relation to *Nexavar*[®] (Patent No. IN21578) for the year 2009 by Bayer Corporation stated that 4665 units of the drug were imported and 1679 units of the drug were sold. But it does not indicate the number of tablets contained in each of 4665/1679 units. Nor does it indicate the number of such units required by each patient per month. True copy of the FORM-27 filings in relation to Patent No. IN21578 filed by Bayer Corporation are annexed herewith as **ANNEXURE P-9**.
- (e) **Place of manufacture:** FORM-27 requires Patentees to specify the quantity and value of patented invention manufactured in India. If the product is imported, the Patentee must provide country-wise details of the quantity and value of import. 109 out of 217 (approximately 50%) FORM-27 filings that claimed to have worked the patent did not indicate the place of manufacture of the patented invention.
- (f) **Licensing information:** FORM-27 requires patentees to furnish all available details relating to licences and

sub-licences granted during the concerned year. One third of the FORM-27 filings did not even indicate whether any license was granted during the year. Moreover, close to half of them which indicated to have licensed their patent did not disclose any details of licensees.

(g) Statement on reasonable requirements of the public:

If the patent has been worked in a particular year, FORM-27 requires the Patentee to indicate whether or not the reasonable requirement of public have been met, either partly, adequately or to the fullest extent, at a reasonable price. A vast majority of FORM-27 filings indicated that public requirements have been met, but failed to provide any factual data or evidence in support of such assertions. At least three patentees claimed that they met this requirement through their various Patient Assistance Programs ('PAPs'). These patentees, however, failed to disclose the specific extent of assistance provided to patients. Illustratively, the FORM-27 declaration filed in relation to Patent No. IN21578 covering *Nexavar*® (an anti-cancer drug) by Bayer Corporation for the year 2011, claimed that the reasonable requirement of public had been met to the fullest extent. However, the Indian Patent Office found the exact opposite and went on to grant a compulsory licence over this patented drug in favour of NATCO, on the ground that the drug sold by the patentee was far too expensive and only 2% of the patient population had access to it. This finding has attained finality, with the Hon'ble Supreme Court of India upholding the grant of compulsory licence by the IPO *vide* Order dated

12.12.2014 [S.L.P (c) No. 30145 of 2014]. True copies of the said FORM-27 filings are annexed herewith as **ANNEXURE P-10**.

(h) Value of sales in foreign denomination: FORM-27 requires the Patentees to provide the value of their patented products, (either imported or manufactured in India), in terms of Indian National Rupee ('INR'). The survey revealed four (4) FORM-27 declarations containing the amount in currencies other than INR, and that too, without specifying the rate of conversion.

24. The following table contains a summary of Petitioner's findings on defective declarations by patentees:

NATURE OF DEFECTS		TOTAL	
		F-27s	%
QUANTITY	Undisclosed	79	38.3
	Indeterminate Units	71	58.1
VALUE	Undisclosed	84	38.3
	Foreign Denomination	4	0.1
MANUFACTURE	Location Undisclosed	109	50.3
LICENSING INFORMATION	Undisclosed	89	33.5
	Undisclosed Details	33	50.4
NON-WORKING	Reasons Undisclosed	28	66.7

A detailed summary of investigations conducted by the Petitioner is annexed herewith **ANNEXURE P-11**.

25. It is submitted that the defective disclosures make a mockery of an important statutory obligation enshrined in Section 146 and Rule 131 of the Patents Act. If this practice is allowed to continue, the entire objective behind the working requirement stands defeated, thereby causing prejudice to innovation imperatives and the right of the

public in ensuring that the patent is being worked for their benefit.

(C) NON-COMPLIANCE BY LICENSEES

26. As noted above, Section 146(2) states in no uncertain terms that every patentee and every licensee (whether exclusive or otherwise) must disclose the extent to which the patented invention has been worked on a commercial scale in India. This mandate is again reiterated in Sub-rule (2) of Rule 131 of the Patents Rules which provides that working information shall be submitted by both Patentees and Licensees, exclusive or otherwise, in terms of the format set out under FORM-27, within three months of the end of each year.
27. Despite the clear statutory mandate, the Respondent authorities appear to be reading down the provision and not insisting on FORM-27 filings by Licensees. The Respondent authorities *vide* letter dated 12.03.2014, in relation to an RTI application dated 06.03.2014, stated that no FORM-27 was received from Licensees. More problematically, they go on to suggest that the Section 146 mandate to disclose patent working information applies only to patentees and not to licensees. The relevant excerpts of the correspondence is as follows:

RTI Application dated 06.03.2014	Reply of Respondent authorities dated 12.03.2014
State the number of valid patents for which duly filled FORM-27 applications was submitted by Licensees for the years 2009 to 2012	Form 27 are filed by Patentees only, as such required information is not in possession of this authority.

True copy of the RTI application dated 06.03.2014 and reply of Respondent authorities dated 12.03.2014 are annexed herewith collectively as **ANNEXURE P-12 (Colly)**.

(D) DEFECTS IN E-FILING FACILITY

28. In a laudable initiative, the Respondent authorities introduced a “Comprehensive Online Filing Services for Patents” (**e-filing facility**) (URL: ipindiaonline.gov.in/epatentfiling/goForLogin/doLogin) in 2012, to provide a convenient way for patentees and licensees to file various forms online, including FORM-27. Shockingly, however, the online version exempts patentees and licensees from declaring all relevant particulars under FORM-27. In particular, patentees and licensees need not submit information pertaining to the quantum of the patented product imported or manufactured as part of the online form. The online form is such that they are prevented from submitting this information, even if they wanted to. Snapshots of the FORM-27 e-filing facility as on 11.04.2015 is annexed herewith as **ANNEXURE P-13**.
29. This blatant dilution of an important statutory mandate enables patentees and their licensees to evade public scrutiny of the true extent to which the patent has been licensed and worked. This waiver of patent working disclosure requirements for Licensees by Respondent authorities is unfounded, arbitrary, illegal and violative of provisions of the Patents Act and Rules.

IV. DERELICTON OF STATUTORY DUTY BY RESPONDENT AUTHORITIES

30. Despite evidence of widespread contravention of Section 146 read with Rule 131 of the Patents Act and Rules, the

Respondent authorities have simply failed to initiate any action against errant patentees and their licensees. In fact, in response to an RTI application filed by the Petitioner, the Respondent authorities admit that no action has been taken against any patentee or licensee, till date, for failure to comply with the FORM-27 disclosure mandate. True copies of the said applications and corresponding replies from Respondent authorities are annexed herewith collectively as **ANNEXURE P-14 (Colly)**.

31. More egregiously, the Respondent authorities have disregarded their own order dated 09.03.2012 in C.L.A No. 1 of 2011, wherein they granted India's first post TRIPS compulsory licence in favour of NATCO Pharma Ltd., a reputed generic pharmaceutical company. The compulsory licence, was in respect of *Sorefanib Tosylate*, an excessively priced anti-cancer drug (*Nexavar*®) patented by Bayer Corporation (Patent No. IN21578). While granting the licence, the Respondent authorities imposed several conditions on the licensee (NATCO), including an obligation to account for the sales of the licensed patented drug on a quarterly basis.
32. In a letter dated 12.02.2014, the Respondent authorities stated that NATCO had not submitted this information, in relation to an RTI request dated 10.02.2014. A year later, the Petitioner through his RA, once again, brought this to the attention of the Respondent authorities *vide* RTI application dated 19.01.2015. However, Respondent authorities *vide* letter dated 06.02.2015 stated that NATCO is yet to submit these sales details. Furthermore, the

Respondent authorities have not initiated any action against NATCO for this blatant contravention of an important licensing condition. A true copy of the RTI applications dated 10.02.2014 and 19.01.2015 and the respective replies from Respondent authorities dated 12.02.2014 and 06.02.2015, is annexed herewith collectively as **ANNEXURE P-15 (Colly)**.

33. The inaction of Respondent authorities against this flagrant violation of working disclosure norms by patent right-holders is illegal and arbitrary and a gross dereliction of their public statutory duty. It enables patent holders to evade public scrutiny of the manner in which they have used or abused a statutorily granted monopoly, and frustrates an important rationale underlying the patent system and the social bargain inherent within.
34. The inaction by Respondent authorities also seriously prejudices the citizens' right to know as to how patents are serving the public interest. Unless concrete action is taken, patentees will have no incentive to comply with an important statutory obligation. It is submitted that patentees are often loathe to provide working information voluntarily and it is only the threat of statutory sanction that will compel them to do so. This is amply illustrated in the Petitioner's own case, wherein a detailed set of questions were addressed to Bayer Corporation in relation to its patented anti-cancer drug (*Nexavar*®) seeking clarifications on their FORM-27 filings. These clarifications were absolutely necessary as the Petitioner found several inconsistencies, gaps and errors in their submissions. However, Bayer Corporation refused to comment on the issue, initially citing that the matter was *sub-judice* and

later on simply refusing to respond on the apparent ground that other litigations were pending. A detailed summary of the investigations, including various communications addressed to Bayer Corporation, is annexed herewith as ANNEXURE P-16.

V. SIGNIFICANCE OF PATENT WORKING NORMS

35. The mandatory disclosure of commercial working of patent serves as an important tool for advancing innovation and public interest goals, as outlined below:

(A) INTELLECTUAL PROPERTY DUTIES

36. The grant of a patent represents a “social bargain” between the State and the inventor, whereby an inventor who discloses new and valuable scientific or technological information to the public is rewarded with a state sanctioned monopoly for twenty (20) years. In the Indian context, the statute makes clear that the social bargain also comprises a promise that the Patentee will work the patented invention for the public benefit, by ensuring that patented goods are available in adequate quantities and for a reasonable price.
37. In the event of this promise being breached, the statute provides for penalties in the form of a compulsory licence, or even a revocation of the patent. To this extent, the patent regime not only grants exclusive “rights” to patentees to prevent others from manufacturing and distributing the patented invention, but also imposes “duties” on them to work the invention for the public good. For the sake of convenience, these are labelled as “intellectual property duties”.

38. The spirit of the working requirement can be gleaned from Section 83 of the Patents Act, which articulates the foundational philosophy of the Indian patent regime. The provision reads as follows:

83. General principles applicable to working of patented inventions.-

- (a) that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay;
- (b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;
- (c) that 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;
- (d) that 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;

- (e) that patents granted do not in any way prohibit Central Government in taking measures to protect public health;
- (f) that 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; and
- (g) that patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.

39. The importance of this requirement has been stressed by the Ayyangar Report which stated that (¶135):

Patents must be enabled to fulfill their prime purpose, *viz.*, being worked in the country, and as early as possible after they are granted. Where this is incapable of being achieved the law must enable a patent to be revoked.

Further, the Statement of Objects and Reasons accompanying the Patents Act, 1970 clearly states that "*patent rights are not worked to the detriment of the consumer or to the prejudice of trade or industrial development*".

40. Chapter XVI to the Patents Act translates the above foundational philosophy by conferring extraordinary powers on Respondent authorities to either (a) issue a compulsory licence or (b) revoke the patent, if the patent

holder fails to satisfy the “working” requirement as explained below.

41. Chapter XVI of the Patents Act authorizes the Respondent authorities to issue a compulsory licence against any patent in force. Of the various grounds that trigger the issue of a compulsory licence under the Indian Patents Act, the most prominent one is spelt out in section 84, wherein a licence is to be issued, if the following conditions are fulfilled:
 - (a) the reasonable requirements of the public with respect to the patented invention has not been satisfied; or
 - (b) the patented invention is not available to the public at a reasonably affordable price; or
 - (c) the patented invention is not worked within the territory of India.
42. Furthermore, as per section 85 of the Patents Act, the Controller can go to the extent of revoking a patent if the patented invention has not been worked in India even after two (2) years from the date of grant of the compulsory licence.
43. Any failure to adequately work a patented product has debilitating consequences for both innovation as well as the end consumer, particularly in terms of access to medicines and public health. It is thus that the Patents Act, at the time of enactment in 1970, expressly excluded pharmaceutical products from the scope of patentability. In 2005, however, patent rights had to be granted to such pharmaceutical inventions owing to an international treaty mandate under the Trade-Related Aspects of

Intellectual Property Rights ('TRIPS'). However, rather than simply introducing pharmaceutical product patents and leaving it at that, the Indian Parliament also introduced several safeguards, such as post-grant oppositions, rigorous patentability standards for pharmaceutical inventions [Section 3(d)], liberal parallel import and Bolar provisions, so as to retain some space for generic manufacturer to continue producing affordable versions of important medications. Parliament further strengthened compulsory licensing and revocation provisions that were already present in the 1970 Patents Act including *inter alia*, by introducing an additional ground for permitting compulsory licensing for drug exports to countries with no manufacturing capacity.

44. Despite the above safeguards, a number of patented lifesaving drugs remain highly priced and unaffordable to a vast majority of our population. This is more than amply demonstrated by the compulsory licence dispute mentioned earlier, where Bayer Corporation, a German Patentee priced a critical cancer drug at Rs. 2.8 lakhs a month. Owing to the excessive price and the fact that the drug was affordable to little over 2% of the entire patient population, the Patent Office granted a licence in favour of NATCO Pharma Ltd, a domestic generic company which undertook to sell this at Rs. 8,800 a month. This finding of the IPO was then endorsed by the IPAB (dated 04.03.2013) and the Bombay High Court (dated 15.07.2014), which noted that:

.....it must be pointed out that Section 84(7) of the Act provides a deeming fiction which deems that reasonable requirement of the public is not satisfied, if the demand for

patented article is not met to an adequate extent. The Parliament has deliberately used the word “adequate extent”. The aspect of adequate extent would vary from article to article. So far as luxury articles are concerned the meeting of adequate extent test would be completely different from the meeting of adequate extent test so far as medicines are concerned. In respect of medicines the adequate extent test has to be 100% i.e. to the fullest extent. Medicine has to be made available to every patient and this cannot be deprived/scarified at the altar of rights of patent holder. In fact this is the mandate of Parliament by providing for Compulsory Licensing.

45. As can be seen from the above, even if a single patient does not have access to the patented medicine, the patent cannot be said to have been sufficiently worked and the patentee has effectively failed in its important duty to satisfy the reasonable requirements of the public.
46. It is humbly submitted that without full and complete patent working data, the compulsory licensing and revocation provisions will come to naught. It bears noting that NATCO relied significantly on Bayer’s Form 27 submissions for *Nexavar*® in order to demonstrate that Bayer was not able to satisfy the reasonable requirements of the drug in so far as the public were concerned. It also relied on the FORM-27 submissions to demonstrate that the patent was not being “worked” (manufactured) in India, an argument that the Controller of Patents agreed

with. Thus, patent working data is critical for triggering the compulsory licensing and revocation provisions. If this trigger is made more difficult by keeping the data secret and opaque, it will ultimately affect consumers by denying them potentially more affordable technologies and goods, a concern most starkly felt in the area of life saving/extending medicines, such as Bayer's *Nexavar*.

47. The grant of a compulsory licence has, however, earned severe brickbats from the pharmaceutical industry lobby, as also the US and EU governments. A ferocious campaign against compulsory licensing norms and the disclosure of patent working norms has been underway ever since the grant of India's first post TRIPS compulsory licence. In one such brazen attempt at pressuring India to change its law, the Intellectual Property Owners Association ('IPOA') sought the intervention of the United States ('US') government to force India to do away with the FORM-27 patent disclosure norms. Their submissions before the United States Trade Representative ('USTR') dated 07.02.2014 states that:

Not only is this "Form 27" process highly burdensome from an administrative point of view, but we are concerned that the information that is provided could be eventually used to justify compulsory licenses in a variety of industries, as specifically contemplated in the Form. Recently, submission of Form 27 have become publicly available, which is likely to result in even greater pressure on Indian authorities to compulsory license the covered products.

48. Given that this political pressure from the US has only intensified in the recent past, it is conceivable that the Respondent authorities may be even more lax in their implementation of the patent working disclosure mandate, a mandate that serves a valuable function and lies at the very heart of a well-functioning patent system. A copy of the IPOA submissions made before USTR dated 07.02.2014 is annexed herewith as **ANNEXURE P-17**.
49. Lastly, it bears noting that the failure to work a patented invention impacts the prospect of obtaining a restraining order or injunction against an alleged infringer. In *Franz Xaver Humer v. New Yash Engineering* (ILR (1996) 2 Del 791), this Hon'ble court refused to grant an injunction to the Plaintiff-Patentee for not having worked the patented invention.
50. Further, Section 108(1) of the Act entitles the Patentee or her exclusive Licensee, to obtain an injunction and seek either damages or accounts of profits against any infringer. In awarding the said reliefs, Section 109(1) requires the Court to consider the loss suffered or likely to be suffered as a result of infringement. It is humbly submitted that patent working information disclosed through FORM-27 is critical to determining such "loss". Therefore, it is critical that this information be disclosed by all patentees in meticulous detail.
51. In a nutshell, Indian patent law imposes intellectual property duties on IP owners in order that they might serve the interests of the public. A violation of such duties results in three key sanctions:

- (a) Grant of compulsory licence against the patent in accordance with Chapter XVI of the Act;
 - (b) Revocation of the patent as under Section 85;
 - (c) A denial of an injunction and other remedies provided under Section 108 against infringers;
52. Given the importance of the working requirement and the need to ensure that compulsory licensing and revocation proceedings are given effect to, it is absolutely critical that information around working be made available to the public in a transparent, comprehensive and accessible manner. FORM-27 declarations are a key tool for promoting such transparent disclosure and must be implemented and enforced meaningfully.

(B) HIGH TECHNOLOGY PATENTS AND TROLLS

53. While the pharmaceutical sector is beset with issues of patent abuse in the form of high drug prices and unaffordability for the ordinary consumer, the high technology sector, particularly telecommunications, is plagued with issues of blocking patents and trolls.
54. A Patent Troll, also known as a Patent Assertion Entity (PAE) or a Non-Practicing Entity (NPE), refers commonly to a Patentee who is uninterested in working the patent by translating it into an innovative product or technology that will benefit society at large. Rather such a patentee effectively hoards the patent in a bid to extract undue rents from a legitimate third party inventor who happens to step on the patent (mostly incidentally) in the course of developing one or more of their innovative products. In other words, the sole purpose of a Patent Troll is to use the patent as a rent-seeking instrument from legitimate

innovators who undertake product development and are prone to accidentally stepping on the toes of the troll patentee. [See Danier P. McCurdy, *Patent Trolls Erode the Foundation of the U.S. Patent System*, SCIENCE PROGRESS (JAN. 12, 2009); Gerald N. Magliocca, *Blackberries and Barnyards: Patent Trolls and the Perils of Innovation*, 82 NOTRE DAME L. REV. 1809, 1801 (2007)]

55. Aggressive patent assertion by trolls impacts innovation in a serious way and creates market inefficiencies, thereby prejudicing public interest. This has prompted several nations to initiate patent reform, including the US which is now considering a new bill, namely, the Saving High-Tech Innovators from Egregious Legal Disputes Act of 2013 ('**SHIELD Act**'). The Act forces Trolls to pay defendant and attorney costs in the event that they lose the patent infringement suit.
56. Closer home in India, S. Ramkumar attained notoriety as a patent troll, deploying a bogus patent to extract excessive rents from a variety of telecom companies. He filed a Patent Application (Ref. 161/MAS/2002) on 04.03.2002 titled "Mobile phone with a plurality of simcards allocated to different communication networks" ('**Dual SIM switching technology**') and obtained a patent (Patent No. IN214388) on 11.02.2008. This was, however, revoked four (4) years later by the IPAB. In the meantime, the Patentee managed to extort large sums of money from importers of dual SIM phones including *inter alia* by an *ex parte* interim injunction against several telecom companies, such as Samsung, Mirc Electronics and Spice Mobile, to restrain them from manufacturing, importing and selling dual SIM handsets. The patent was finally revoked by the IPAB on

01.06.2012 since it was neither new nor inventive, but by then, a number of technology companies had paid out huge sums of money in what can only be described as patent extortion of the worst sort. It is pertinent to note that the patent specification did not even offer any indication of how the proposed new innovative idea outlined in the patent would work. At no point did the Patentee have any plans for building a technology or product out of the registered patent. Rather the sole aim of registering the patent was to extort money from technology companies that would in some way step on the patent whilst building their products.

57. The Indian patent regime has a number of provisions, such as compulsory licensing (for non-working) to guard against such trolling activity. However, a full and complete disclosure of working information under FORM-27 is critical to triggering such safeguards, for it tells the public whether or not the Patentee has worked or intends to work the patent or has merely registered it with an intent to extract rents, as a troll does. Unfortunately, none of the patentees surveyed in this sector have complied with the letter and spirit of the working disclosure norms and have failed to supply adequate information through their Form 27 filings.
58. Given the various complexities involved in the high technology sector, the lack of transparent information around patent working makes it difficult for honest competitors to assess patent risks, as they undertake research and development on a technology and may inadvertently step on a patent or two.

(C) PATENT: PRODUCT LINKAGE

59. Another significant advantage of the patent working requirement is in assessing the link between patents and innovation/product development.
60. The working disclosure requirement generates valuable information on how a patent is being worked or translated into a commercial product. If the goal of the patent regime is to incentivize innovation (through the emergence of superior technological products and offerings), it is only logical that the rights-holder be compelled to submit this information on a regular basis.

(E) COMPETITION LAW & ABUSE OF DOMINANCE

61. Apart from the Patents Act, the Competition Act, 2003 also contains provisions to regulate abusive excesses by rights-holders. Section 4 of the Act prohibits a dominant player in the market (eg., a patentee with a clear dominant share of the market) from engaging in any of the following practices:
 - (a) imposing unfair or discriminatory conditions for sale or price to access the patented product;
 - (b) limiting or restricting production or development of the patented product thereby causing prejudice to consumers;
 - (c) denial of market access;
 - (d) Leveraging dominance in one market to enter or protect other relevant markets;
62. In fact, the Competition Commission of India ('CCI') has, in the recent past, initiated investigations against Ericsson Inc., on allegations of abuse of dominant position in their

patent licensing practices covering AMR, 3G and EDGE technologies. Needless to state, the public disclosure of working information is absolutely critical for the CCI's investigation and assessment of the full extent to which Ericsson has used and worked the patents till date. The Petitioner was, however, shocked to find out that Ericsson refused to disclose the details of patent working and licensing practices under the garb of confidentiality. In other words, Ericsson did not include any of these details in its FORM-27 filings.

VI. DEFECTS IN FORM-27 FORMAT

63. The information necessary for the Respondent authorities to effectively monitor the working of patents must contain such particulars as would enable one to determine whether or not the patented invention is satisfying the reasonable requirements of the public (through supply in adequate quantities as well as at a reasonably affordable price to the public). This information is absolutely critical for triggering the compulsory licensing and revocation provisions and thereby ensuring that the public at large have the potential to access affordable medications etc. The current version of FORM-27 is, however, far from satisfactory, inasmuch as the necessary particulars are vaguely worded and fails to call for a number of important particulars relating to the working of patents, as highlighted below:

- (1) It is a matter of serious concern that a critical part of FORM-27 merely asks patentees and licensees to "*give whatever details are available*" without mandating such disclosure in stronger terms, given that it is a statutory mandate under section 146 (to disclose the

full extent of commercial working of the patent). Owing to this loose wording, patentees and licensees have taken this column lightly and provide vague information without being specific.

(2) Paragraph 3(i)(b) of the current FORM-27 states:

If worked: quantum and value (in Rupees), of the patented product:

- i) manufactured in India.
- ii) imported from other countries. (give country wise details)

This, however, fails to capture the actual sale of the patented invention in India. For it is not clear what is meant by “value” of the product. Furthermore, the present format is insufficient to assess the extent to which the patented invention or product is able to meet the reasonable requirement of public. When it comes to patented drugs, for instance, it is necessary to know the required dosage per patient to effectively assess as to how many patients are being served through the supply of the patented product. This aspect was critical factor in the grant of first compulsory licence in relation to *Nexavar*®. Both the Controller of Patents that decided to grant this licence at the first instance and the appellate authorities (IPAB and Mumbai High Court) that upheld the grant of this licence had to determine the total number of patients requiring the drug as against the total number of patients actually receiving the drug from Bayer’s sales in the market.

- (3) Paragraph 3(ii)(b) of the current FORM-27 vaguely requires patentees to disclose licensing information. The form states: *“give whatever details are available: the licences and sub-licences granted during the year.”* Due to the lack of precision, a number of submissions do not adequately disclose details of licensees or licensing arrangements. Therefore, in order to make for a more effective assessment, this provision ought to clearly ask whether the patent has been licenced in the first place; if so, it must then call for more elaborate details, such as the names of licensees, broad terms of licence, whether products are being manufactured under the licence, whether such licenses are exclusive or not, etc. It is humbly submitted that this requirement may not pose too much an onerous obligation, as patentees are already known to submit such information to tax authorities and internally capture this information for accounting and other commercial purposes.
- (4) The FORM-27 declaration merely requires patentees to state whether or not the reasonable requirement of the invention to the public have been met. However, this vague and broad question is non-sensical, since it is likely to be met with only one standard response from all patentees, namely that they are satisfying the reasonable requirements of the public. One is hard pressed to think of any patentee that would state otherwise, and our FORM-27 investigations do not disclose a single filing that states so. Rather than merely asking the patentee to self attest whether or not it believes it is satisfying the reasonable requirements of the public, the FORM-27 declaration

ought to call for more particular information as would help make this assessment. In particular, the patentee ought to be asked to submit the following:

- i) estimated demand of the patented invention or product;
 - ii) extent to which the demand has been met (i.e., availability);
 - iii) details of any special schemes or steps undertaken by the patentee to satisfy the demand.
- (5) Few patentees have stated that the reasonable requirements of the public are met through Patient Assistance Programs ('PAPs'). However, they fail to disclose the extent of such assistance actually provided to patients.
- (6) In the high technology sector, the same patent can be deployed in multiple products or technologies and therefore the working requirement should capture all of these potential manifestations of the patent. In all such cases, the patentee must be made to disclose all of the technologies, applications and products where the patent is so deployed or used. Since the current FORM-27s do not call specifically for this information, patentees typically disclose only one application or product.
- (7) Conversely, it is often the case with telecommunications and other technology sectors, that one product may contain multiple patents underlying it. Therefore, it is critical that the working disclosure norms require the rights-holder

to furnish a complete list of patents and patent applications covering that particular technological product. Illustratively, if Siemens owns the patents covering the CDMA technology (a technology standard), it ought to disclose all related patents in each of the FORM-27 filings relating to the various patents covering CDMA technology. In short, every patentee that holds multiple patents that cover a single product must disclose other “related” patents in their FORM-27 for each such patent. And the present Form 27 format ought to be amended to mandate this information. A failure to disclose such information adversely impacts innovation and competitors significantly, as it unduly increases their search costs in all cases where there are potentially multiple patents covering the same product.

64. It is, therefore, submitted that the current format of FORM-27 is wholly insufficient to achieve the objects sought to be achieved by the Patents Act, namely that of diffusing full and complete information around the existence and extent of the commercial working of a patent, such that it helps trigger the compulsory licensing and revocation provisions in appropriate cases. The lack of access to patent working information directly impacts the possibility of such trigger and denies consumers and the wider public the potential to access more affordable patented technologies, a concern most starkly felt in the area of patented medicines and public health.

65. True copies of the FORM-27 filings surveyed by the Petitioner, along with his RAs, is annexed herewith as **ANNEXURE P-18**.

GROUNDNS

- A. That under Sub-section (2) of Section 146 of the Act, every patentee or licensee, as the case maybe, is mandatorily required to submit a statement on the extent to which the patented invention has been worked on a commercial scale in India in the manner provided under Rule 131 of the Patents Rules and in accordance with the format prescribed in FORM-27 under Schedule II to the Patent Rules.
- B. That there is a widespread non-compliance with Sub-section (2) of Section 146 read with Rule 131 of the Patents Act and Rules, by several patentees and licensees.
- C. That the failure by Respondents in initiating proceeding against errant patentees and licensees under Section 122 for non-filing and incomplete filing of FORM-27s is arbitrary, illegal, and a gross dereliction of a public duty.
- D. That the failure of Respondent authorities in ensuring compliance with statutorily prescribed mandatory disclosure norms on commercial working of patents is seriously prejudicial to the public and violative of Articles 19(1)(a), 19(1)(g) and 21 of the Constitution.
- E. That the *de facto* waiver of working disclosure requirements in favour of licensees is arbitrary,

illegal, unfounded and violative of provisions of the Patents Act and Rules.

- F. That the rights-holders stand to gain tremendously, *albeit* unfairly to the detriment of public interest, by suppressing critical patent working information and further scuttling any potential efforts at generating information as may potentially subject them to compulsory licensing and revocation.
- G. That without full and complete patent working information, it is very difficult to trigger the compulsory licensing and revocation provisions; provisions that are absolutely essential for ensuring that the reasonable requirements of the public are satisfied by third party competitors who can supply them with accessible and affordable goods or services, particularly affordable medications.
- H. That the lack of transparent disclosure will make it impossible for honest competitors to assess their IP risks thereby stifling competition, innovation and industrial growth, and hence detrimental to public interest. That this would in turn impact the public at large, who are denied potential access to the prospect of more affordable goods or services from competitors.
- I. That the current format of FORM-27 is grossly insufficient to evaluate the commercial working of the patent for reasons enumerated in Paragraph 60-64 above, and hence contrary to the objectives of the Patents Act.

- J. That the e-filing facility provided to enable electronic filing of patent working information is grossly defective inasmuch as it fails to call for full information as specified in FORM-27 under Schedule II of the Patents Rules.
 - K. That the disclosure of patent working information will ensure a well-functioning patent system that has a credible link between a twenty year monopoly and the conversion of this exclusive legal right into a valuable product/knowledge for society.
 - L. That the inaction by Respondent authorities enables patentees to escape public scrutiny of their efforts in working their patents, thereby causing prejudice to the social bargain underlying the patent system and undermining its very objective. And making it more difficult to trigger the compulsory licensing and revocation provisions, and consequently impacting the public at large by denying them potentially cheaper and more accessible products and services, particularly affordable medications.
 - M. That the Petitioner craves the leave of this Hon'ble Court to urge additional grounds at the time of hearing.
59. The Petitioner has not filed any other petition before the Hon'ble Supreme Court of India or before this Hon'ble Court, praying for similar reliefs. There is no other efficacious appeal or remedy in any other court or forum available to the petitioner herein.

60. This Hon'ble Court has jurisdiction to entertain the instant Petition.
61. The Petitioner reserves the right to add, alter, amend the contents of the Petition and file such application as maybe required in the *bona fide* interest of justice.

PRAYER

WHEREFORE the Petitioner respectfully pray that this Hon'ble Court may, in public interest, be pleased to:

- (1) Issue a Writ of *Mandamus*, or any other appropriate writ or order directing Respondent authorities:
 - i. To strictly enforce compliance with Section 146(2) read with Rule 131(1) of the Patents Act, 1970 and Rules thereunder in relation to disclosure of information on commercial working of patent by every patentee and licensee;
 - ii. To initiate proceedings under Section 122(1) of the Patents Act, 1970 against errant patentees and licensees who have failed to comply with the mandatory requirement of Section 146(2) read with Rule 131(1) of the Patents Act, 1970 and Rules;
 - iii. To issue notices under Section 146(1) of the Patents Act, 1970 to patentees and licensees to furnish true and complete information in relation to incomplete disclosure of information on commercial working of the patent;

- iv. To immediately rectify the 'comprehensive online filing services for patents' to enable patentees and licencees to submit full and complete working information;
 - v. To publish and upload the entire information relating to commercial working of all patents for all years of operation of the patent on their website as per Section 146(3) of the Patents Act, 1970 and Rules thereunder;
- (2) To declare that the present format of FORM-27 as contained in Schedule II of the Patents Rules, 2003 is insufficient to sub-serve the purpose of the Patents Act, 1970;
- (3) To constitute a committee of experts to suggest reforms to improve the public disclosure norms around the commercial working of patents;
- (4) Grant such other reliefs, including the costs of this writ petition, in the interests of justice.

FILED BY:

Date : 21.05.2015
Place : New Delhi

N. SAI VINOD
Advocate for the Petitioner
D-131, Panchsheel Enclave,
New Delhi - 110 017

5. That I have done whatsoever inquiry/investigation which was in my power to do, to collect all data/material which was available and which was relevant for this court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.

DEPONENT

VERIFICATION

Verified at New Delhi on this day of May, 2015, that the contents of this affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

DEPONENT

APPENDIX-A

I. PATENTS ACT, 1970

*Chapter XVI***Working of Patents, Compulsory Licenses and Revocation****83. General principles applicable to working of patented inventions.-**

Without prejudice to the other provisions contained in this Act, in exercising the powers conferred by this Chapter, regard shall be had to the following general considerations, namely;—

- a. that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay;
- b. that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;
- c. that 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;
- d. that 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;
- e. that patents granted do not in any way prohibit Central Government in taking measures to protect public health;
- f. that 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; and
- g. that patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.

84. Compulsory license.-

- (1) At any time after the expiration of three years from the date of the grant of a patent, any person interested may make an application to the Controller for grant of compulsory licence on patent on any of the following grounds, namely:—
- (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.
- (2) An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent and no person shall be estopped from alleging that the reasonable requirements of the public with respect to the patented invention are not satisfied or that the patented invention is not worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price by reason of any admission made by him, whether in such a licence or otherwise or by reason of his having accepted such a licence.
- (3) ...
- (4) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not

worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may grant a licence upon such terms as he may deem fit.

85. Revocation of patents by the Controller for non-working.-

- (1) Where, in respect of a patent, a compulsory licence has been granted, the Central Government or any person interested may, after the expiration of two years from the date of the order granting the first compulsory licence, apply to the Controller for an order revoking the patent on the ground that the patented invention has not been worked in the territory of India or that reasonable requirements of the public with respect to the patented invention has not been satisfied or that the patented invention is not available to the public at a reasonably affordable price.
- (2) ...
- (3) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that patented invention has not been worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may make an order revoking the patent.
- (4) ...

91. Licensing of related patents.-

- (1) Notwithstanding anything contained in the other provisions of this Chapter, at any time after the sealing of a patent, any person who has the right to work any other patented invention either as patentee or as licensee thereof, exclusive or otherwise, may apply to the Controller for the grant of license of the first mentioned patent on the ground that he is prevented or hindered without such licence from

working the other invention efficiently or the best advantage possible.

Chapter XX
PENALTIES

106. Power of court to grant relief in cases of groundless threats of infringement proceedings.-

(1) Where any person (whether entitled to or interested in a patent or an application for patent or not) threatens any other person by circulars or advertisements or by communications, oral or in writing addressed to that or any other person, with proceedings for infringement of a patent, any person aggrieved thereby may bring a suit against him praying for the following reliefs, that is to say –

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats; and
- (c) such damages, if any, as he has sustained thereby.

(2) Unless in such suit the defendant proves that the acts in respect of which the proceedings were threatened constitute or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid the court may grant to the plaintiff all or any of the reliefs prayed for.

Explanation.—A mere notification of the existence of a patent does not constitute a threat of proceeding within the meaning of this section.

108. Relief in suit for infringement.-

- (1) The reliefs which a court may grant in any suit for infringement include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.
- (2) The court may also order that the goods which are found to be infringing and materials and implements, the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation.

109. Right of exclusive licensee to take proceedings against infringement.-

- (1) The holder of an exclusive licence shall have the like right as the patentee to institute a suit in respect of any infringement of the patent committed after the date of the licence, and in awarding damages or an account of profits or granting any other relief in any such suit the court shall take into consideration any loss suffered or likely to be suffered by the exclusive licensee as such or, as the case may be, the profits earned by means of the infringement so far as it constitutes an infringement of the rights of the exclusive licensee as such.
- (2) In any suit for infringement of a patent by the holder of an exclusive licence under sub-section (1), the patentee shall, unless he has joined as a plaintiff in the suit, be added as a defendant, but a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

122. Refusal or failure to supply information.-

- (2) If any person refuses or fails to furnish—

- (a) to the Central Government any information which he is required to furnish under sub-section (5) of section 100;
 - (b) to the Controller any information or statement which he is required to furnish by or under section 146, he shall be punishable with fine which may extend to ten lakh rupees.
- (3) If any person, being required to furnish any such information as is referred to in sub-section (1), furnishes information or statement which is false, and which he either knows or has reason to believe to be false or does not believe to be true, he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Chapter XXIII
Miscellaneous

146. Power of Controller to call for information from patentees.-

- (1) The Controller may, at any time during the continuance of the patent, by notice in writing, require a patentee or a licensee, exclusive or otherwise, to furnish to him within two months from the date of such notice or within such further time as the Controller may allow, such information or such periodical statements as to the extent to which the patented invention has been commercially worked in India as may be specified in the notice.
- (2) Without prejudice to the provisions of sub-section (1), every patentee and every licensee (whether exclusive or otherwise) shall furnish in such manner and form and at such intervals (not being less than six months) as may be prescribed statements as to the extent to which the patented invention has been worked on a commercial scale in India.

- (3) The Controller may publish the information received by him under sub-section (1) or sub-section (2) in such manner as may be prescribed.

II. PATENTS RULES, 2003

131. Form and manner in which statements required under section 146(2) to be furnished.-

- (1) The statement shall be furnished by every patentee and every licensee under sub-section (2) of section 146 in Form 27 which shall be duly verified by the patentee or the licensee or his authorized agent.
- (2) The statement referred to in sub-rule (1) shall be furnished in respect of every calendar year within three months of the end of each year.
- (3) The Controller may publish the information received by him under sub-section (1) or sub-section (2) of section 146 in the Official Gazette and in such other manner as he may deem fit.

APPENDIX-B

FORM 27
THE PATENTS ACT, 1970 (39 of 1970)
&
The Patents Rules, 2003

**STATEMENT REGARDING THE WORKING OF THE PATENTED
INVENTION ON COMMERCIAL SCALE IN INDIA**
[See section 146(2) and rule 131(1)]

- | | |
|---|--|
| 1. Insert name, address and nationality. | In the matter of Patent No..... of
I/We.....
..... |
| 2. State the year to which the statement relates | The patentee(s) or licensee(s) under Patent No hereby furnish the following statement regarding the working of the patented invention referred to above on a commercial scale in India for the year |
| 3. Give whatever details are available. | <p>i. The patented invention:</p> <p>{ } Worked { } Not Worked [Tick (√) mark the relevant box]</p> <p>(a) if not worked: reasons for not working and steps being taken for working of the invention</p> <p>(b) If worked: quantum and value (in Rupees), of the patented product:</p> <p>i) manufactured in India.</p> <p>ii) imported from other countries. (give country wise details)</p> <p>ii. the licences and sub-licences granted during the year;</p> <p>iii. state whether public requirement has been met partly/adequately/to the fullest extent at reasonable price.</p> |
| 4. To be signed by person(s) giving the statement | Signature |

To

The Controller of Patents,
The Patent Office,
at

ANNEXURE P-1

SHAMNAD BASHEER

Managing Trustee, IDIA Charitable Trust
 C/o. Spire
 No.45, 2nd Floor, Jubilee Building
 Museum Road, Bangalore 560 025
 (shamnad@gmail.com: 9818825148)

I. ACADEMIC QUALIFICATIONS

DPhil (PhD): University of Oxford (2013)

MPhil: University of Oxford (2004-2005)

BCL (distinction): University of Oxford (2002-2003)

BALLB (Hons.): National Law School of India University (NLSIU), India (South Asia's leading law school)

II. CURRENT POSITIONS

- Founder and Managing Trustee, IDIA (Increasing Diversity by Increasing Access to Legal Education) (2010 onwards)
- Visiting Professor, Masters in Public Policy Programme, National Law School of India University, Bangalore: (2015 onwards)
- Associate, Oxford IP Research Center (OIPRC), Univ of Oxford: (2004 onwards)
- Founder, SpicyIP, a blog dedicated to Indian IP (rated by MIP as one of 50 most influential IP personalities)
- Founder, Promoting Public Interest Lawyering (P-PIL), a forum to leverage synergies between legal academia and practice to achieve shared public interest goals.
- Member, Expert Committee on Access and Benefit Sharing, National Biodiversity Authority (NBA): (2012 onwards)
- Research Affiliate, IP Osgoode, Canada: (2008 onwards)
- Founder, Lex Biosis, a collaborative initiative between lawyers and law students to enhance clinical learning
- Founder, CLAM, an online platform for collaborative policy making
- Editorial Board, Journal of Intellectual Property Rights (JIPR): (2011 onwards)
- Advisory Panel Member, Indian Journal of Intellectual Property Law: (2008 onwards)
- Editorial Board Member, India Business Law Journal: (2007 onwards)
- Editorial Board Member, Christ College Law Review
- Editor: PharmAsia (Portal dealing with pharmaceutical news from Asia)
- Founder member of EDIP, an online intellectual property database
- Apex Member, Patent Facilitating Centre, TIFAC
- Member, Academic Council, NUALS, Cochin
- Member, Academic Council, University of Allahabad

III. PAST POSITIONS (ACADEMIC/ RESEARCH)

- Ministry of HRD Chaired Professor in Intellectual Property Law, West Bengal National University of Juridical Sciences (NUJS), Kolkata, India: (November 2008-Feb 2014)
- Frank H. Marks Visiting Associate Professor of Intellectual Property Law, George Washington University, Washington, US: (2008-2009)
- Visiting Scholar, University of Washington School of Law, April-May 2012
- Expert, Global Advisory Council (IP), World Economic Forum (2011-2013)
- Visiting Faculty, Munich IP Law Center, (May-July 2007)

- Member, India Project, GW University: (2006-2007)
- Visiting Faculty, LSE Summer School in IP law: (May-June 2006)
- Visiting Scholar, University of Illinois at Urbana Champaign, Illinois: (September 2005-January 2006)
- Invited Research Fellow, Institute of Intellectual Property (IIP), Japan: (2003-2004)
- Tutor, Sarah Lawrence Program, Wadham College, University of Oxford (*Tutorials on Patent Law*): 2003-2004
- Visiting Scholar, CUSAT, Cochin, 2012-2013
- Visiting Faculty, Indian Law Institute, New Delhi : 2000-2002
- Editor: Oxford Commonwealth Law Journal (2003-04)

IV. PRACTICE/CONSULTANCY

Anand and Anand - Leading Indian Intellectual Property Law Firm, Delhi

Period : January 2000 – end of 2002.

Position : Was a Senior Associate and Head of Technology and Media Law Division.

Practice Areas : Intellectual Property Litigation, Advisory and Transactional (dealing with technology transfers, licensing agreements etc).

Intellectual Property Consultancy/Other Assignments:

1. Consultant, Innovate Legal, London (Jan 2008-present): advising on aspects of Indian pharmaceutical patent law.
2. Ongoing consultancy to various IP stakeholders (government, inter-government agencies, law firms, NGO's and policy think tanks) on various aspects of Indian intellectual property

V. SCHOLARSHIPS, AWARDS AND DISTINCTIONS

- 2015:** Infosys Award for research excellence in humanities (law), selected by jury headed by Nobel laureate, Prof Amartya Sen.
- 2014:** Award for Excellence in IP Education (by LegalEra)
- 2014:** SpicyIP, a blog I founded was rated by MIP as one of 50 most influential IP personalities for 2014.(and earlier for 2011)
- 2012:** Amicus-Academic Intervenor in the Novartis vs UOI landmark patent case at the Indian Supreme Court. Made submissions to the court and argued for two days.
- 2012:** Cited by the Controller General of Patents in his decision granting India's first compulsory licensing decision (*Natco vs Bayer*)
- 2011:** Selected to be on the Global Advisory Council for IP on the World Economic Forum (WEF)
- 2011:** Rated as one amongst the top 10 patent academics whose works are downloaded the most from SSRN in 2011 (the only non US academic from the ten member list).
- 2010:** Selected for the European Union Visitors Programme (EUVP) for year 2011 (a programme that facilitates dialogue between EUVP Fellows and EU Policy Makers)
- 2007:** Awarded the first place in a writing contest held by ATRIP for an article dealing with the Novartis-Gleevec patent case in India.
- 2004:** Awarded the second prize in a writing contest held by the Stanford Technology Law Review for an article on biotechnology and patent law in India.

- 2004:** Awarded the MS Lin Scholarship to attend the Inter Pacific Bar Association (IPBA) conference in Seoul.
- 2003:** Awarded the Wellcome Trust studentship prize and the Clarendon Scholarship for the Mphil/Dphil at Oxford.
- 2003:** Awarded a distinction on the BCL at Oxford.
- 2003:** Awarded the IBA (International Bar Association) scholarship.
- 2002:** Awarded the Shell Centenary-British Chevening Scholarship for the BCL at Oxford.
- 2001:** Awarded the second best prize by the Institute of Company Secretaries of India (ICSI) for an article on "Internet and Intellectual Property Rights".

VI. PROFESSIONAL QUALIFICATIONS

- 2005:** Solicitor, UK
- 2002:** Patent agent, registered with the Patent Office, India
- 1999:** Advocate, Bar Council of India (called to the Bar in August 1999)

VII. PROFESSIONAL AFFILIATIONS (past and present)

- 2008:** Member of GLG (Gerson Lehrman Group) Council: group of experts/consultants in various disciplines
- 2002:** International Bar Association (IBA)
- 2002:** Inter Pacific Bar Association (IPBA)
- 2001:** Computer Law Association (CLA)

VIII. PROFESSIONAL AWARDS

Rated as one of the leading technology lawyers in India by the IFLR 1000 guide (a Euromoney publication) in 2002.

IX. PUBLICATIONS

Books:

Published:

1. *When Intellectual Property Rights Overlap* (co-edited with Neil Wilkof), OUP 2012. (Indian edition of book with Indian introductory chapter, OUP India 2013).

Forthcoming:

1. *Patent Law and Policy in India: A Developmental Perspective* (forthcoming book by OUP: expected date: 2016)
2. *Copyright Amendment Act (2012): A Fair Balance* (forthcoming edited book by EBC: expected date: 2016)

Book Chapters:

1. *Pharmaceutical Patent Enforcement: A Developmental Perspective* "Patent Law in Global Perspective" Bagley and Okediji (ed), OUP, 2014
2. *The WIPO Development Agenda: Factoring in the "Technologically Proficient" Developing Countries* "Implementing WIPO's Development Agenda" DeBeer (ed), (Wilfred Laurier University Press/Centre for International Governance Innovation/International Development Research Centre, Waterloo, Ontario, 2009).

3. *Trademark Issues on the Internet: Domain Name Dispute Resolution, "Information Technology Law in India"* (Indian Law Institute, New Delhi, 2004).
4. *Media Laws in India 'Investing in India'* (Asia Law and Practice, Euromoney Publications (Jersey) Limited, 2002).
5. *E-commerce in India: An E-evolving E-jurisprudence 'Asian E-evolution'* (Asia Law & Practice, Euromoney Publications (Jersey) Limited, 2001).

Reports:

1. Was part of a team of international experts that prepared a WIPO Report on the Informal Economy and Intellectual Property (2014)
2. Led the team that prepared a WHO report on Intellectual Property and Public Health (2014).
3. Undertook a commissioned report for WIPO (Standing Committee on Patents) on exceptions/limitations to patents, as part of a team led by Professor Lionel Bentley.
4. Prepared a report on the state of IP infrastructure in India for the EU as part of the EU TIDP Project (2006).
5. Undertook an extensive survey of Indian Patent Law and prepared reports on the compulsory licensing regime, experimental use provisions and patent pooling in India on behalf of the Institute of Intellectual Property (IIP), Tokyo and Japanese Patent Office (JPO) in 2004.
6. Authored reports for the Intellectual Property Institute (IPI) on pharmaceutical patents and regulatory data protection.

Papers (Refereed):

1. *Alternative Incentives for Pharmaceutical Innovation*, 27 Intellectual Property Journal (IPJ) 13, 2014.
2. *The Invention of an Investment Incentive for Pharmaceutical Innovation*, Journal of World Intellectual Property, (2012) Vol. 00, no. 00, pp. 1-60
3. *How to Achieve International Action on Falsified and Substandard Medicines*, British Medical Journal (BMJ), 2012;345:e7381 (with Amir Attaran et al)
4. *The Doctrine of Equivalents in Various Patent Regimes: Does Anybody Have it Right?*, 11 Yale J.L. & Tech. 261, 2009 [co-authored with 7 others, including The Hon. Sir Nicholas Pumfrey, Justice Meirbeck and Prof Adelman].
5. *Exhausting Copyrights and Promoting Access to Education: An Empirical Take* Journal of Intellectual Property Rights, Vol 17, July 2012, pp 335-347 (coauthored with Khettry, Nandy and Mitra)
6. *The Experimental Use Exception: A Developmental Perspective*, IDEA Volume 50, Number 4, 2010, page 831-873 (with Prashant Reddy)
7. *Outsourcing "Bayh Dole" to India: Lost in Transplantation*, Columbia Journal of Asian Law, Volume 23, Number 2, Spring 2010
8. *Turning TRIPS On Its Head: An IP "Cross Retaliation" Model for Developing Countries*, Law and Development Review, Berkeley Press, Volume 1, 2010.
9. *Section 377 and the 'Order of Nature': Nurturing 'Indeterminacy' in the Law?*, NUJS Law Review, Vol.2, No. 3, 2009
10. *The "Efficacy" of Indian Patent Law: Ironing out the Creases in Section 3(d)*, Volume 5, Issue 2, Script-ed, August 2008. (co-authored with Prashant Reddy)
11. *'Ducking' TRIPS in India: A Saga Involving Novartis and the Legality of Section 3(d)* National Law School of India Review, Vol. 20, No. 2, pp. 131-155, 2008.
12. *TRIPS, Patents and Parallel Imports: A Proposal for Amendment*, Indian Journal of Intellectual Property Law, Vol. 2, pp. 63-86, 2009 (with M Kochupillai)
13. *Exhausting' Patent Rights in India: Parallel Imports and TRIPS Compliance*, Journal of Intellectual Property Rights, Vol. 13, pp. 486-497, September 2008 (with Mrinalini Kochupillai).

14. *Popping Patented Pills: Europe and a Decade's Dose of TRIPs* EIPR Volume 28 Issue 4 (May 2006). (with David Vaver) (in French translation as "Overdose de médicaments brevets: l'Europe dans un 'TRIPs' depuis dix ans" in Bernard Remiche & Jorge Kors (eds.), *L'Accord ADPIC: dix ans après* (Éds. Larcier, Brussels, 2007) 129; (reprinted in N. Sudarshan (ed.), *Public Health and Law* (ICFAI University, Law Books Division, Hyderabad, 2008).
15. *India's New Patent Regime: Aiding Access or Abetting Genericide* International Journal of Biotechnology, 8 (5) 2006.
16. *Taming of the Flu: Working Through the Tamiflu Patents in India* Journal of Intellectual Property Rights 11(2)(2006) 113-124 (with Tahir Amin)
17. *India's Tryst with TRIPs: The Patents (Amendment) Act 2005* 1 Indian J. L. & Tech. 15 (2005). (reprinted in Edson Beas Rodrigues Jr. and Fabrício Polido (ed), *Propriedade Intelectual* (Rio de Janeiro, Elsevier, 2007) and in N. Sudarshan (ed.), *Public Health and Law* (ICFAI University, Law Books Division, Hyderabad, 2008).
18. *Policy Style Reasoning at the Indian Patent Office* Intellectual Property Quarterly (IPQ), 2005, 3, 309-323 (paper based on BCL thesis submitted at Univ of Oxford that was the winner of second prize in a contest by Stanford Technology Law Review (STLR)).
19. *Block Me Not: Genes as Essential Facilities?* Journal of Law, Technology and Policy (2005) Issue No 2, 55. (reprinted in Journal of Intellectual Property Rights, September 2006, 11(5) 309-390).

Other Papers:

1. Indian Legal Education: Some Thoughts for Reform, Concept Note Prepared for committee headed by Gopal Subramaniam, SG, India. available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1584037 <
2. The "Glivec" Patent Saga: A 3-d perspective on Indian patent policy and TRIPs Compliance, ATRIP, 2007 <www.atrip.org/upload/files/essays/Shamnad%20Basheer%20Glivec%20Patent%20Saga.doc> (Best Paper Award by ATRIP)
3. *Block Me Not: Genes as Essential Facilities: IIP*, International Collaboration on Intellectual Property, Tokyo, 2003.
4. *Regulatory Data Protection under Article 39.3 of TRIPs: Towards a Compensatory Liability Standard*, India Paper No 108, Intellectual Property Institute (IPI), London (Commissioned by the IPI and available at <<http://www.ip-institute.org.uk/pub.html>>)
5. *TRIPs Compatibility Review of the Patents Amendment Act 2005*, India Paper No 106, Intellectual Property Institute (IPI), London (Commissioned by the IPI and available at <<http://www.ip-institute.org.uk/pub.html>>).
6. *The Patents Amendment Act, 2005: Implications In and Outside India*, 62 IIP 43 (with Mrinalini Kochupillai).
7. *Unleashing the True Potential of Convergence: Will the Law be a Damp Squib*, 'Computer and Telecommunications Law Review' (Sweet and Maxwell, London November 2002).
8. *IP Owners Win Indian World Cup Contest 'Managing Intellectual Property'* (Sweet and Maxwell, London, August 2002).
9. *India Liberalizes Domain Name Policy* 'International Internet Law Review' (Sweet and Maxwell, London, Feb 2001).
10. *Patenting Genes and Gene Sequences: The Next El Dorado* (EDIP [Electronic Database of Intellectual Property], Oxford, January 2001)
11. *Confidentiality of Genetic Information: Need for Legislation* 5 Law & Medicine 101 (1999)
12. *Cash in on Geno-Dollars* 'Science Express' May 2000
13. *Internet and Intellectual Property Rights* 30 (8) Chartered Secretary (August 2000).
14. *Establishing Rights/Legitimate Interests in a Domain Name: Cyber squatters Get Creative* 'Computer and Telecommunications Law Review' (Sweet and Maxwell, London, January 2001).

15. *Compulsory Licensing Under Competition Law: the Concept of Essentiality* Know IP - Stockholm Network Monthly Bulletin on IPRS, Vol 2, Issue 1, February 2006.

Newspaper Editorials:

1. [These Rancid Rankings](#), Indian Express, Feb 10, 2015 (critiquing IP rankings for their flawed methodology).
2. [Patented Price Gouging and the Enduring Enigma of Drug Costs](#), LiveMint, December 17, 2014 (advocating that drug makers be forced to disclosed individual R&D costs for drugs)
3. [Fixing the Tribunal Mess](#), Financial Express, Oct 10, 2014 (analyzing the SC decision striking down the National Tax Tribunal as Unconstitutional)
4. [New Drug Era](#), Indian Express, September 27, 2014, (highlighting the erosion of the innovator:generic divide)
5. [Judging a Democratic Deficit](#), Indian Express, September 9, 2014 (advocating that there be public consultation in all Indian law/policy making)
6. [Patently Positive](#), Financial Express, June 20, 2014 (arguing that Indian IP law is not biased and protective of IP owners too)
7. [Innovation that Includes](#), Indian Express, April 26, 2014 (discussing the need to democratize the innovation ecosystem and make it “inclusive”)
8. From [Ambedkar to Doniger: Can Copyright Law Rescue Books at Risk](#), Firstpost, March 28, 2014 (discussing compulsory licensing, copyright and free speech).
9. [Patent Error](#), Indian Express, Feb 20, 2014 (critiquing the US industry ranking of Indian IP)
10. [When Fair is Foul, and Foul is Fair](#), Hindu, December 30, 2013 (discussing the Khobrogade scandal and sexual harassment controversies in India and why a strict legal view is not the answer)
11. [Patent Lies and Convenient Truths](#), Hindu, September 4, 2013 (discussing the hypocrisy of the US in the international IP dialogues)
12. [Why Students Need the Right to Copy](#), Hindu, April 26, 2013 (discussing the OUP copyright case against Delhi University pertaining to student photocopying).
13. [Patent with a Purpose](#), Indian Express, April 3, 2013 (analyzing the Novartis decision in the larger context of Pharma Innovation Policy).
14. [Publishers vs Students](#), Indian Express, August 30, 2012 (discussing the copyright photocopying controversy between Delhi University and book publishers)
15. [Set the Bar Higher](#), Indian Express, May 2012 (discussing the future of legal education reform in India)
16. [CLAT: A Question of Aptitude](#), Times of India, April 9, 2012 (discussing CLAT and strategies for preparation)
17. [A Life Saver](#), Indian Express, March 15, 2012 (discussing India’s first compulsory licensing order)
18. [Let’s Bridge the Democratic Deficit](#), Times of India (Crest Edition), 16 April 2011 (advocating for opening up the policy making process in the wake of Hazare agitation)
19. [Govt for Legalising Parallel Import of Copyright Works; Publishers Oppose](#), Economic Times 17 March 2011 (dealing with parallel imports and access to education)
20. [Remainders of the Day: A Case for Parallel Imports](#) (dealing with parallel imports of books), Mint, 25 Feb 2011.
21. [Build Patent Regime on Fortified Law](#), Economic Times, 7 October 2010 (with Prashant Reddy: discussing the unconstitutionality of the present compulsory licensing scheme)
22. [In the Service of Privacy](#), Times of India (Crest Edition), 7 August 2010 (advocating for a privacy legislation)
23. [Sold for a Song](#), Indian Express, 16 July 2010 (advocating for better remuneration and royalties for copyright artists, lyricists and musicians).

24. [Don't Burn the Digital Books](#), *Indian Express*, Feb 11, 2010 (dealing with copyright issues in the context of the Google Book Search project)
25. ['3 Idiots' and the Morality of Numbers](#), *Indian Express*, Jan 7, 2010 (dealing with the copyright controversy involving Chetan Bhagat and the movie 3 Idiots)
26. [Saying No to the Wrong Drugs](#), *Indian Express*, September 24, 2009 (dealing with definition of spurious drugs)
27. [Encouraging Drug Innovation](#), *Mint*, August 27, 2009 (dealing with the revised Mashelkar Committee Report)
28. [The Law, Smoke and Mirrors](#), *Mint*, March 12, 2009 (dealing with a ban on the advertising of "smoking")
29. [Creating Informal IP Norms](#), *Mint*, December 23, 2008
30. [A Method to the Madness](#), *Mint*, November 5, 2008 (discussing software patents in India).
31. [Indian Patent Bill: Let's Not be too Hasty](#), *Sci-Dev*, 10 Sept 2008 (Bayh Dole Bill).
32. [Make that Bargain Equitable](#), *Mint*, August 26, 2008 (discussing WTO-TRIPS and cross retaliation).
33. [The Potency of a Middle Path](#), *Mint*, July 9, 2008 (discussing patents and drug regulation).
34. [Break with Tradition](#), *Indian Express*, July 5, 2008 (discussing the Kerala TK protection model)
35. [Ranbaxy-Daiichi Merger: An Emerging Ardhnarishwar Model?](#) *DNA*, July 10, 2008.
36. [The Rhetoric of Patent Busting](#), *Indian Express*, April 12, 2008 (discussing the Roche vs Cipla (Tarceva) litigation)
37. [Patent Problem](#) *DNA*, August 29, 2007 (discussing the pharma vs generic wars)
38. [Pharma MNCs Bullying Govt with China Sword?](#) *Economic Times*, 14 August 2007.
39. [Empty Allegations](#), *DNA*, Feb 25, 2007 (discussing the Mashelkar Committee Report Controversy)
40. *Baazee, Bajaj, and Bailing out the Law*, *Economic Times*, February 5, 2005
41. [Of Generics, Pharmaceutical Patents and the Countdown to 2005: A Note to Policy Makers](#), *Economic Times*, 26th September 2004 (dealing with pharma mailbox applications).

Interviews:

1. [How to Secure Creative Capital](#), *India Today (Aspire)*, April 2015.
2. [Maverick Holistic Lawyers](#) *Career 360*, 9th Jan, 2015
3. [Novartis Verdict will Help Genuine Drug Innovation](#), *The Hindu*, 6 April 2013
4. [The Current Patent System is Deeply Flawed](#), *Frontline* (May 2012), Volume 29, Issue 8.
5. [Law and Behold](#), *The Hindu* 7th Jan 2011 (on the Common Law Admission Test [CLAT])
6. [Changemakers](#), *Times of India*, 2nd November 2011 (on legal education)
7. [IDIA](#), *Bar and Bench*, May 5, 2010 (discussing IDIA project and access to education)
8. [Access to Education](#), *India Law Journal*, June 2010 (discussing access to legal education)
9. [Encourage Innovation with Holistic Approach](#) *The Hindu* (13 October 2008)
10. [The Novartis Saga – Prescription for Patent Strategy in India](#), *The Hindu Business-Line* (Sept 5, 2007)
11. [We need to evolve our own set of distinctive intellectual property norms'](#) *The Hindu Business Line* (Feb 24, 2007)
12. [In Person Interview](#), *Journal of Intellectual Property Law & Practice* (2009) 4 (6): 447-448.

X. PAPER PRESENTATIONS AND WORKSHOPS

1. IP and Biodiversity, Kerala Biodiversity Congress, March 2015.
2. A Tale of Two Patents, Conference by Univ of Washington and ISIL, New Delhi, Jan 2015
3. India and Trade Secrecy, WTO Public Forum on Trade Secrecy, Geneva, 1 October 2013
4. Indian IP and Innovation, "India as a Pioneer of Innovation", University of Pennsylvania Conference, November 15, 2013.
5. Opening India, Open Access and Research Conference, Queensland University of Technology (QUT), Australia, 31 October 2013,
6. IP and Biodiversity: NBA Asean Workshop, 5th September 2012
7. Globalising Legal Education: Whither Access and Diversity? GLEE Conference, Harvard Law School, 13 April 2012.
8. Data Protection or Investment Protection? Conference by University of Pennsylvania law school and NLS, Bangalore, 17th July 2012.
9. Patents and Compulsory Licensing: A Middle Path Solution? Paper Presented at University of Washington School of Law, 30 April 2012.
10. Pharmaceutical Patent Injunctions: A Developmental Perspective, MHRD Conference at NLU Jodhpur, 17 April 2012.
11. Pharmaceutical Patents and Public Health: Paper Presented at Special Lecture Series organized by University of Kerala, 6 July 2012.
12. Towards a Paid Innovation Commons, WIPO:WTO Teachers Colloquium, Geneva, June 2011.
13. Compulsory licensing: Present Framework and Future Prospects, presentation at the CUSAT workshop on "Rethinking Intellectual Property Rights", January 2012.
14. Traditional Knowledge: From Reductionism to Holism, ATRIP Conference, Stockholm, Sweden, July 2010
15. Pharmaceutical Patent Enforcement in India: Some Thoughts for Reform, "New Spaces, New Actors and the Institutional Turn in Contemporary Intellectual Property Law", Kyushu University, Japan, February 13 and 14, 2010
16. A TK Model for India, "FICPI Indian Symposium", New Delhi, December 9-12, 2009
17. *Romanticising Innovation*, 5th International Forum on Creativity & Inventions – *A Better Future for Humanity in the 21st Century*, WIPO FICCI Conference, New Delhi, November 11-13, 2009
18. *Indian IP: A Holistic View*, "International Bioforum", Tokyo, July 3, 2009
19. *Indian IP: An Extra Legal Perspective* "IPBC Forum", Chicago, June 22, 2009
20. *Indian IP: Judicial Enforcement* "Training for Indian Judges", National Judicial Academy, Bhopal, September 5, 2009
21. *Patent Enforcement as a Trade Barrier*, "International Trade Barriers for Indian Generics", Pharmexcil, Mumbai, August 21, 2009
22. *The Indian "Bayh Dole": Injection of "Public Interest"*, Conference by NUJS IP Chair, NUJS, Kolkata, Sept 12, 2009
23. *The Drug-Patent Linkage Issue: A Transparency Solution*, "Pharmaceuticals 2014: Will India Leap Forward" FICCI, Mumbai, March 18, 2009.
24. *Accessing patented knowledge: Compulsory license under Competition law*, "Patents and Platform Technologies: R&D in Malaria and Tuberculosis", Centad, New Delhi, September 9, 2009
25. *FOSS: Decoding the Law*, IOTA Free Technology Convention, Science Auditorium, Kolkata, 27th January 2009.
26. *Collaborative Innovation in IP Policy Making*, "Collaborative Innovation for Development: Enlarging the Global Commons" (Knowledge Commons, New Delhi, 6th December 2008)
27. *Indian Patent Law and TRIPS: From Gripping to Tripping*, "1st Annual National Law School of India Review Symposium on Challenges to India's Patent Regime" (National Law School of India University, Bangalore 12 April 2008).

28. *"From Faith Based IP to Fact Based IP"*, Symposium on Intellectual Property Rights (IPR) to celebrate World Intellectual Property Day, (OPPI, New Delhi, April 25th 2008).
29. *Indian Patent Law and its Tryst with TRIPS*, EGA 4th legal Forum (Brussels, Jan 30, 2008)
30. *"Mobilizing Governments for A2K"*, Moderator, Access to Knowledge (A2K) Conference (Yale Law School, April 2007).
31. *Impact of US Patent Reform on Indian Firms*, USIACC panel on Patent Law Reform (Washington, 5 September 2007)
32. *Patents and Innovation in India*, National Academy of Sciences (Washington DC, 24 Sept 2007)
33. *History of the Indian Patent System, "Patent Rights in India & China"*, (IPO Education Foundation, June 11, 2007, Washington)
34. *Are Pharmaceutical Inventions a Special Class*: Invited Speaker by the University of Augsburg (Germany, 20 July 2007)
35. *Factoring in the Technologically Proficient Developing Countries*, Strategies to Implement a WIPO Development Agenda, EDGE Network, (Vancouver 15 October 2007)
36. *India's New Patent Regime: TRIPS Implications*, First speaker at IP Speaker Series organised by PIJIP (Program on Information Justice and Intellectual Property) (American University, Washington, April 19th, 2007).
37. *Schizophrenia in Indian IP Policy?* Invited Speaker to panel on "India, IP Developments and TRIPS" at the 15th Annual Fordham Conference on Intellectual Property Law Policy (Fordham, New York, April 12, 2007).
38. *Indian Generics: Future IP Strategies "US-India Partnerships in Drug Discovery and Generics"* (Asia Society: Observer Foundation, New York, 20 November 2007).
39. *Bridging IP Disputes: Towards a "Middle Path"* Conference to Commemorate World IP Day (IPI, Washington, 26 April 2007)
40. *Enforcement of Patents in India: The Likely Scenario*, American Society of International Law event on IP (GW, Washington, 27 March 2007)
41. *Patents and Access to Medicines* Invited panelist by UNDP to workshop titled 'Access to Treatment for HIV/AIDS in Arab States (Cairo, 17 November 2005).
42. *Impact of India's Patent Amendment on the Pharmaceutical Industry* 'Invited Speaker to a workshop by SIPLA at Franklin Pierce Law Centre (Concorde, 20 October 2005).
43. *Unblocking Gene Patents: An Antitrust Approach* Invited speaker by the Shandong University of Technology (Zibo, China 24 September 2005).
44. *Genes as Essential Facilities: An Antitrust Approach*, 'CLASF Conference' (London September 2004).
45. *Creativity and Human Society* 'Queen Mary ESRC Research Seminar Series' 29-30 November 2004, London (Invited Panelist)
46. *Block Me Not: Genes as Essential Facilities* 'Fifth Asian Bioethics Conference (ABC5)' (Tsukuba, Japan 13-16 February 2004).
47. *Patenting Research Tools in Human Genome Studies: View from a Technologically Proficient Developing Country* (Joint Presentation with Ms. Sivaramjani Thambiseti, University of Cambridge April 2003).
48. *IT laws: A Practitioner's Perspective* 'Indian Institute of Management (IIM)' (Bangalore 14 December 2001).
49. *Convergence: Legal Issues* 'International Conference on International Law in the New Millennium: Problems and Challenges ahead' Organised by Indian Society of International Law (New Delhi 4-7 October 2001).
50. *Copyright Issues on the Internet* 'National Seminar on Copyrights and Related Rights' Organised by the Copyright Office, Ministry of Human Resource Development (Kottayam, Kerala 12 February, 2001).
51. *Dispute Resolution Mechanism in Cyberspace* 'National Seminar on Challenges of Internet Law' Organised by the Indian law Institute (Vigyan Bhawan, New Delhi 4 March 2001).

XI. CONFERENCES (ORGANISATION)

1. Organised a Workshop on IP Teaching Methodology along with University of Washington School of Law and NLU Delhi: Jan 2014, March 2013 and March 2012
2. Organised several IP conferences at WB NUJS (themes include 2012 copyright amendments (November 2012) and Indian “Bayh Dole” Bill (September 2009)).
3. Organised an International Conference on “Innovation, Creativity and IP Policy” with the Max Planck Institute, Munich: November 19-20, 2010

XII. OTHERS

Public Interest Cases (Illustrative list)

1. Filed a Public Interest Litigation before the Delhi High Court in July 2014 arguing that the RTI must be given pre-eminence over all other statutes when it comes to information dispensation to the public.
2. Intervened in a copyright law suit as part of a group of academics (SPEAK) interested in furthering access to education. This law suit was filed by OUP and other leading publishers against Delhi University for copyright infringement in creating course packs.
3. Filed a Writ Petition before the Gujarat High Court on behalf of an underprivileged student who was denied admission to GNLU on an arbitrary ground.
4. Represented Missing Seamen on Board an Iranian Ship.
5. Filed a Writ Petition Against the Government of India, challenging the constitutionality of the Intellectual Property Appellate Board (IPAB). Court ruled in our favour striking down key aspects of IPAB selection process.
6. Was academic intervenor cum amicus before Supreme Court in landmark patent case, Novartis vs Union of India, where court relied significantly on arguments advanced in its final decision.
7. Investigated the extent of working of pharmaceutical patents in India Filed RTI's to determine the extent of “working” of pharmaceutical patents in India. Compiled report and presented to Controller General Kurian. As a result of this investigation, the government has now made all working statements publicly available.

Parliamentary Depositions (Illustrative list)

1. Was invited as an expert witness before Parliamentary Standing Committee dealing the Indian “Bayh Dole” Bill (appeared before them twice in March 2010)
2. Was invited as an expert witness before Parliamentary Standing Committee dealing with Indian Copyright Act (Amendment) Bill (appeared before them in May 2010)

Government Advisory

Advising various government agencies from time to time on intellectual property advisory issues, such as the Ministry of Commerce (DIPP), HRD Ministry (copyright office), the National Biodiversity Authority, Department of Science and Technology. In particular, was part of a team that helped revamp the Indian Patent Agent Exam.

(TRUE COPY)

ANNEXURE P-4

A COMPREHENSIVE LIST OF PATENTS SURVEYED

I. PHARMACEUTICAL SECTOR

A. Allergan Inc.

PRODUCT	PATENT NO.	GRANT DATE
<i>Ganfort, Combigan</i>	212695	12.12.2007
<i>Ganfort, Combigan</i>	219504	07.05.2008

B. Astrazenca AB

<i>Zoladex</i>	198149	13.01.2006
<i>Iressa</i>	199501	08.12.2006
<i>Brilinta</i>	200897	05.06.2006
<i>Crestor</i>	205788	10.04.2007
<i>Faslodex</i>	206639	03.05.2007
<i>Brilinta</i>	209907	11.09.2007
<i>Iressa</i>	217528	27.03.2008
<i>Brilinta</i>	238424	04.02.2010
<i>Iressa</i>	239083	04.03.2010
<i>Iressa</i>	240234	04.04.2010
<i>Brilinta</i>	247984	08.06.2011
<i>Brilinta</i>	252484	17.05.2012
<i>Brilinta</i>	253995	12.09.2012

C. Bayer Corporation

<i>Xarelto</i>	211300	24.10.2007
<i>Nexavar</i>	215758	03.03.2008
<i>Avelox</i>	215998	05.03.2008

D. Bristol-Myers Squibb

<i>Dasatinib</i>	203937	16.11.2006
<i>Onglyza</i>	206543	30.04.2007
<i>Baraclude</i>	213457	17.01.2008
<i>Orencia</i>	214214	07.02.2008
<i>Ixemptra</i>	223589	16.09.2008
<i>Ixemptra</i>	224075	29.09.2008
<i>Ixemptra</i>	234024	29.04.2009

E. F. Hoffmann-LA-Roche AG

<i>Tarceva*</i>	196774	Feb. 2007
<i>Pegasys</i>	198952	21.02.2006
<i>Mircera</i>	206891	15.05.2007

<i>Valcyte</i>	207232	01.06.2007
<i>Bonviva</i>	208718	07.08.2007
<i>Dilatrend</i>	209504	04.09.2007
<i>Invirase</i>	227217	05.01.2009
F. Genentech Inc.		
<i>Xolair</i>	205534	05.04.2007
<i>Xolair†</i>	235206	04.07.2012
G. Glaxo Group Limited		
<i>Tykerb</i>	221017	11.06.2008
<i>Tykerb</i>	221171	18.06.2008
H. IRBM Science Part S.p.A		
<i>Isentress†</i>	212400	03.12.2007
I. Janssen Pharmaceutica N.V.		
<i>Intelence</i>	204028	19.09.2006
<i>Sirturo</i>	236811	23.11.2009
J. Merck Sharp & Dohme Corp. (formerly as Schering Corporation)		
<i>Noxafil</i>	202128	13.10.2006
<i>ViraféronPeg</i>	207233	05.06.2007
<i>Janumet, Januvia</i>	209816	06.09.2007
<i>Isentress†</i>	212400	03.12.2007
<i>Janumet, Januvia</i>	235426	02.07.2009
K. Novartis AG		
<i>Afinitor, Certican</i>	202379	04.10.2006
<i>Xolair*</i>	205534	05.04.2007
<i>Galvus, Galvus Met</i>	212815	17.12.2007
<i>Myfortic</i>	221674	07.07.2008
<i>Onbrez</i>	222346	05.08.2008
<i>Vildagliptin</i>	229761	20.02.2009
<i>Diovan, Co-diovan</i>	237273	14.12.2009
<i>Aclasta</i>	237596	29.12.2009
L. Pfizer Inc.		
<i>Tarceva</i>	196774	Feb. 2007
<i>Chantix</i>	204091	26.12.2006
<i>Selzentry</i>	204132	05.01.2007
<i>Chantix</i>	210325	27.09.2007

M. Pharmacia & Upjohn Company

<i>Sutent</i>	209251	23.08.2007
<i>Detrol LA</i>	211539	05.11.2007
<i>Depo-Provera</i>	224279	10.10.2008

II. TELECOMMUNICATION SECTOR

N. Apple Inc.

TITLE OF INVENTION	PATENT NO.	GRANT DATE
<i>A method of performing motion estimation in a digital video system</i>	223889	23.09.2008
<i>Unlocking a device by performing gestures on an unlock image</i>	263108	07.10.2014
<i>List scrolling in response to moving contact over list of index symbols</i>	263125	08.10.2014
<i>Illuminated touchpad</i>	264414	29.12.2014

O. Ericsson Inc.

<i>Linear predictive analysis-by-synthesis encoding method and encoder (AMR)</i>	203034	19.10.2006
<i>Apparatus of producing from an original speech signal a plurality of parameters (AMR)</i>	203036	29.11.2006
<i>Method and system for alternating transmission of codec mode information (AMR)</i>	203686	29.12.2006
<i>Quadriphase spreading codes in code division multiple access communications (3GPP Standard)</i>	204085	26.12.2006
<i>Method and apparatus for generating comfort noise in a speech decoder (AMR)</i>	213723	10.01.2008
<i>Multi-service handling by a single mobile station (3G Standard)</i>	229632	19.02.2009
<i>A method of encoding/decoding multi-code book fixed bitrate celp signal block (AMR)</i>	234157	07.05.2009
<i>A mobile radio for use in a mobile communications system (3G Standard)</i>	240471	12.05.2010

<i>A transceiving unit for block automatic retransmission request (EDGE)</i>	241747	22.07.2010
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P. Motorola Mobility

<i>A selective call receiver</i>	188578	25.07.2003
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<i>A telecommunication network (3GPP Standard)</i>	199910	02.02.2007
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<i>A method for adapting an access probability for a multimedia broadcast multicast service for a communication system (3GPP Standard)</i>	224757	22.10.2008
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<i>Method and apparatus for presenting graphic messages in a data communication receiver</i>	231920	13.03.2009
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<i>Method of validating communication in a wireless communication on device (3GPP LTE Standard)</i>	239197	10.03.2010
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<i>A communication system for transmitting to a remote unit for locating the remote unit (IS-95, IS-2000 Standards)</i>	241931	31.07.2010
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<i>Emergency call placement method</i>	247777	18.05.2011
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Q. Nokia Corporation

<i>A method of transmitting information from a sender to a receiver in a communications system</i>	208450	31.07.2007
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<i>A method and system for selecting an access point in a wireless communication system</i>	220016	15.05.2008
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<i>Method and apparatus for transmission between stations of a communication system</i>	225833	01.12.2008
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<i>Arrangement for generating service-oriented call-charge data in a communication network</i>	226420	17.12.2008
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<i>Supporting in a communication system a request for information on a mobile device</i>	227155	05.01.2009
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<i>A data communication apparatus for communication between a mobile</i>	231889	13.03.2009
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station and base station

<i>Sessions in a communication system</i>	239847	06.04.2010
<i>A method of transmitting complex symbols using a transmission code matrix</i>	240592	19.05.2010
<i>An lpc-type speech synthesiser and a post-processing method for enhancing lpc-synthesised speech</i>	241026	16.06.2010
<i>Symbol interleaving</i>	242227	19.08.2010
<i>Method for sub-pixel value interpolation</i>	252965	12.06.2012

R. Qualcomm Corporation

<i>Video encoding method, video decoding method, video encoder & video decoder thereof</i>	235997	11.09.2009
<i>A method operational in a mobile user device for authentication</i>	242591	02.09.2010
<i>Power control based on an overlapping factor in a quasi-orthogonal ofdm system</i>	244450	07.12.2010
<i>A channel estimation method and a receiver to estimate a channel</i>	249353	18.10.2011
<i>Method and apparatus for phase matching frames in vocoders</i>	250318	22.12.2011
<i>Method and apparatus for performing timing synchronization with base stations</i>	251398	12.03.2012
<i>Ciphering and re-ordering packets in a wireless communication system</i>	251810	07.04.2012
<i>Method and apparatus for list sphere decoding</i>	251876	12.04.2012
<i>Multiplexing and feedback support for wireless communication systems</i>	252127	27.04.2012

S. Research In Motion Ltd.

<i>System and method for queuing and moderating group talk</i>	243876	10.11.2010
<i>An apparatus for a radio communication system</i>	234045	01.05.2009

<i>Apparatus & associated method for facilitating network selection at a mobile node utilizing a network selection list maintained threat</i>	248123	20.06.2011
<i>System and method for secure control of resources of wireless mobile communication device</i>	249536	25.10.2011
<i>Method for providing network information to a wireless device in a wireless local area network</i>	249790	11.11.2011
<i>An always-on wireless internet protocol network</i>	250891	06.02.2012
<i>Method for adjusting presentation of text, images and moving images of an electronic device according to an orientation of the device</i>	252447	16.05.2012

T. Samsung Electronics Co.

<i>A test device for testing a plurality of DSP ICS under the finish product state in a digital video apparatus</i>	191620	25.06.2004
<i>Method for retransmitting data according to radio link protocol in mobile communication system</i>	197686	28.09.2007
<i>An ATM switching system configured to serve an N-ISDN traffic and a method for controlling the same</i>	199194	05.05.2006
<i>A cartridge for an information recording medium</i>	242433	26.08.2010
<i>Method for operating plural applications between portable storage device and digital device, portable storage device, and digital device</i>	244009	15.11.2010

III. PUBLIC FUNDED RESERCH UNITS

U. Council for Scientific and Industrial Research (CSIR)

<i>An improved process for the synthesis of 5-(2-fluorophenyl)-1H-tetrazole</i>	192966	20.01.2006
<i>An improved process for the preparation of raw vegetables having exposed shelf-life</i>	192519	14.10.2005
<i>A device useful for continual forming</i>	194692	17.02.2006

<i>and disensing of doughnut shapped batter for making traditional vada</i>		
<i>An improved process for prepration of 1,1,1,-trichloro-trifluoroethane</i>	194697	17.02.2006
<i>An eco-friendly method of preparation of high purity tetrabromobisphenol-A</i>	196712	21.06.2006
<i>An improved process for the production of high grade synthetic rutile</i>	196947	11.08.2006
<i>An improved process for the preparation of poly(ester-carbonate)s</i>	197048	14.07.2006
<i>A process for the preparation of nutritious instant pudding mix with enhanced shelf life</i>	199735	22.12.2006
<i>An improved process for the prepration of 1-[2-dimethyl lamino-(4-methoxy phenyel)-ethyl] cyclohexanol</i>	208858	13.08.2007
<i>A process for the preparation of high grade synthetic rutile from ilmenites and pigiron as a by-product</i>	218313	31.03.2008
<i>A process for preparation of compound 1,1 - { [(bisalkane-1,n-diyl) piperazine] dioxy } bis (11as)-7- methoxy-1,2,3,11 a-tetrahydro-5h-pyrrolo[2,1-c] [1,4] benzodiazepin-5-one</i>	231500	05.03.2009
<i>A process of isolating camptothecin and/or camptothecinioids (CPT) from novel endophytic fungal strain</i>	238011	18.01.2010
<i>An improved process for recovering cobalt from roast-reduced sea nodules</i>	254692	06.12.2012

V. Department of Biotechnology, Government of India

<i>An anti HIV-1 active bacterial and bactulovirus recombinant EPAP-1</i>	226541	18.12.2008
<i>An improved process for oak tasar cocoon cooking using pineapple extract</i>	236242	13.10.2009
<i>A device for collecting air borne dust generated by moving vehicles</i>	241684	20.07.2010
<i>Novel primers for a PCR-RELP assay for identification of pathogenic mycobacteria</i>	242073	09.08.2010
<i>Dimmer of Phenazine-1-Carboxylic acid and to the process of preparation</i>	243949	11.11.2010

thereof

A method for preservation of human hematopoietic stem or progenitor cells 246982 23.03.2011

Process of extracting anti-white spot syndrome virus molecules from mangrove plants 254984 10.01.2013

W. Indian Institute of Science (IISc)

A method for the manufacture of aqueous solution of metal complexes and a method of manufacturing high temperature coloured vitreous glass-ceramic tiles 197957 07.04.2006

A process for manufacture of ceria-supported platinum as hydrogen-oxygen recombinant catalyst in sealed batteries 198047 24.01.2006

A novel gelled-electrolyte-AGM-hybrid-VRLA battery 201330 25.06.2006

A novel vaccine formulation consisting of DNA vaccine and inactivated virus 207234 01.06.2007

Fuel efficient biomass stove and a method of operating the stove 229283 16.02.2009

A metal ionic catalyst composition and a process thereof 237260 11.12.2009

A peptide and a method thereof 254638 29.11.2012

X. Indian Institute of Technology (IITs) (collectively)

A method of making a supported fluid separation membrane of nanopore structure 197755 09.01.2006

A process of wastewater renovation 203744 15.11.2006

Freeze concentration system 204956 12.03.2007

Highly porous ceramic or metallic material and simple environment friendly process for fabrication of the same 206908 16.05.2007

Strength enhancing insert assemblies 211354 26.10.2007

Three-dimensional core holder for performance evaluation of oil well 225118 31.10.2008

configurations

<i>A combined capacitive and electromagnetic voltage transformer</i>	239070	04.03.2010
<i>A method for magnetic abrasive finishing using a pulsating flexible magnetic abrasive brush</i>	255664	13.03.2013
<i>An abrasive flow finishing device</i>	255847	26.03.2013
<i>A method and apparatus for the formation of patterns on surfaces and an assembly and alignment of the structure thereof</i>	258688	31.01.2014

ANNEXURE P-11

I. SAMPLE SIZE

SECTOR Patentee	NO. OF PATENTS	NO. OF FORM- 27 FILINGS
Pharmaceutical	52	137
Allergan Inc	2	9
Astrazenca AB	13	21
Bayer Corporation	3	11
Bristol-Myers Squibb	7	23
F. Hoffmann-LA-Roche AG	7*	14
Genentech Inc	2	6
Glaxo Group Limited	2	7
IRBM Science Part S.p.A	1†	3
Janssen Pharmaceutica N.V	2	6
Merck Sharp & Dohme Corp.	5†	6
Novartis AG	8*	16
Pfizer Products Inc.	4	8
Pharmacacia & Upjohn Co.	3	7
Telecommunications	52	80
Apple Inc.	4	1
Ericsson Inc.	9	16
Motorola Inc.	7	13
Nokia Corporation	11	20
Qualcomm Inc.	9	17
Research In Motion	7	7
Samsung Electronics Co. Ltd.	5	6
Public Financed Research	37	46
CSIR	13	15
Department of Biotechnology	7	7
IITs	10	14
Indian Institute for Science	7	10
TOTAL	141	263

* licensee
†co-patentee

II. NON-WORKING

Sector	NO. OF FORM-27s	REASONS PROVIDED	
		YES	NO
Pharmaceutical	19	9	10
Allergan Inc	2	0	2
Astrazenca AB	0	0	0
Bayer Corporation	3	0	3
Bristol-Myers Squibb	3	1	2
F. Hoffmann-LA-Roche AG	0	0	0
Genentech Inc	0	0	0
Glaxo Group Limited	0	0	0
IRBM Science Part S.p.A	0	0	0
Janssen Pharmaceutica N.V	6	6	0
Merck Sharp & Dohme Corp.	1	0	1
Novartis AG	3	1	2
Pfizer Products Inc.	1	1	0
Pharmacacia & Upjohn Co.	0	0	0
Telecommunications	5	2	3
Apple Inc.	0	0	0
Ericsson Inc.	0	0	0
Motorola Inc.	0	0	0
Nokia Corporation	2	2	0
Qualcomm Inc.	0	0	0
Research In Motion	0	0	0
Samsung Electronics Co. Ltd.	3	0	3
Public Financed Research	18	3	15
CSIR	6	0	6
Department of Biotechnology	4	0	4
IITs	5	0	5
Indian Institute for Science	3	3	0
TOTAL	42	14	28

III. QUANTITY OF SALES

Sector	NO. OF FORM-27s	QUANTITY PROVIDED		UNIT OF MEASUREMENT	
		NO	YES	NO	YES
Pharmaceutical	118	13	105	71	34
Allergan Inc	7	2	5	5	0
Astrazenca AB	21	3	18	13	5
Bayer Corporation	8	0	8	1	7
Bristol-Myers Squibb	20	6	14	11	3
F. Hoffmann-LA-Roche AG	14	2	12	4	8
Genentech Inc	6	0	6	5	1
Glaxo Group Limited	7	0	7	7	0
IRBM Science Part S.p.A	3	0	3	0	3
Janssen Pharmaceutica N.V	0	0	0	0	0
Merck Sharp & Dohme Corp.	5	0	5	4	1
Novartis AG	13	0	13	9	4
Pfizer Products Inc.	7	0	7	5	2
Pharmacacia & Upjohn Co.	7	0	7	7	0

Telecommunications	75	58	17	-	-
Apple Inc.	1	1	0	-	-
Ericsson Inc.	16	16	0	-	-
Motorola Inc.	13	13	0	-	-
Nokia Corporation	18	18	0	-	-
Qualcomm Inc.	17	0	17	0	17
Research In Motion	7	7	0	-	-
Samsung Electronics Co. Ltd.	3	3	0	-	-
Public Financed Research Units	10	8	2		
CSIR	3	3	0	-	-
Department of Biotechnology	3	3	0	-	-
IITs	2	2	0	-	-
Indian Institute for Science	2	0	2	-	-
TOTAL	203	79	124	71	51

IV. VALUE OF PATENTED PRODUCT

Sector	NO. OF FORM-27s	VALUE INDICATED		IN INR (if applicable)	
		NO	YES	NO	YES
Pharmaceutical	118	11	107	4	103
Allergan Inc	7	2	5	0	5
Astrazenca AB	21	3	18	2	16
Bayer Corporation	8	0	8	0	8
Bristol-Myers Squibb	20	0	20	1	19
F. Hoffmann-LA-Roche AG	14	2	12	0	12
Genentech Inc	6	0	6	0	6
Glaxo Group Limited	7	0	7	1	6
IRBM Science Part S.p.A	3	0	3	0	3
Janssen Pharmaceutica N.V	0	0	0	0	0
Merck Sharp & Dohme Corp.	5	0	5	0	5
Novartis AG	13	0	13	0	13
Pfizer Products Inc.	7	2	5	0	5
Pharmacacia & Upjohn Co.	7	2	5	0	5

Telecommunications	75	60	0	-	17
Apple Inc.	1	1	0	-	-
Ericsson Inc.	16	16*	0	-	-
Motorola Inc.	13	13	0	-	-
Nokia Corporation	18	18	0	-	-
Qualcomm Inc.	17	0	17	0	17
Research In Motion	7	7	0	-	-
Samsung Electronics Co. Ltd.	3	3	0	-	-
Public Financed Research Units	21	13	8	0	8
CSIR	9	9	0	-	-
Department of Biotechnology	3	2	1	0	1
IITs	2	2	0	-	-
Indian Institute for Science	7	0	7	0	7
TOTAL	214	84	115	4	128

** Patentee has provided overall figures instead of the patent(s) in question*

V. DISCLOSURE OF PLACE OF MANUFACTURE

Sector	NO. OF FORM-27s	PLACE OF MANUFACTURE	
		YES	NO
Pharmaceutical	109	85	27
Allergan Inc	7	0	7
Astrazenca AB	18	15	6
Bayer Corporation	8	8	0
Bristol-Myers Squibb	20	12	8
F. Hoffmann-LA-Roche AG	14	10	4
Genentech Inc	6	4	2
Glaxo Group Limited	7	7	0
IRBM Science Part S.p.A	2	2	0
Janssen Pharmaceutica N.V	0	0	0
Merck Sharp & Dohme Corp.			
Novartis AG	13	13	0
Pfizer Products Inc.	7	7	0
Pharmacacia & Upjohn Co.	7	7	0
Telecommunications	75	1	74
Apple Inc.	1	0	1
Ericsson Inc.	16	0	16
Motorola Inc.	13	1	12
Nokia Corporation	18	0	18
Qualcomm Inc.	17	0	17
Research In Motion	7	0	7
Samsung Electronics Co. Ltd.	3	0	3
Public Financed Research	33	25	8
CSIR	9	2	7
Department of Biotechnology	2	1	1
IITs	15	15	0
Indian Institute for Science	7	7	0
TOTAL	217	111	109

VI. DISCLOSURE OF LICENSING ARRANGEMENTS

Sector	NO. OF FORM-27s	LICENCE INDICATED		DETAILS OF LICENSEE (if applicable)	
		NO	YES	NO	YES
Pharmaceutical	137	46	91	0	12
Allergan Inc	9	1	8	-	-
Astrazenca AB	21	4	17	-	-
Bayer Corporation	11	4	7	-	-
Bristol-Myers Squibb	23	11	12	-	-
F. Hoffmann-LA-Roche AG	14	2	12	-	-
Genentech Inc	6	2	4	-	-
Glaxo Group Limited	7	1	6	-	-
IRBM Science Part S.p.A	3	0	3	0	2
Janssen Pharmaceutica N.V	6	0	6	0	6
Merck Sharp & Dohme Corp.	6	0	6	0	2
Novartis AG	16	8	8	-	-
Pfizer Products Inc.	8	6	2	0	2
Pharmacacia & Upjohn Co.	7	7	0	-	-

Telecommunications	80	31	49	26	17
Apple Inc.	1	0	1	-	-
Ericsson Inc.	16	16*	0	-	-
Motorola Inc.	13	4	9	9	0
Nokia Corporation	20	3	17	17	0
Qualcomm Inc.	17	0	17	0	17
Research In Motion	7	7	0	-	-
Samsung Electronics Co. Ltd.	6	1	5	-	-
Public Financed Research Units	47	12	35	7	5
CSIR	15	11	4	0	4
Department of Biotechnology	7	1	6	0	1
IITs	15	0	15	2	0
Indian Institute for Science	10	0	10	5	0
TOTAL	264	89	175	33	34

** Patentee has refused to disclose the details of licensee on the basis of confidentiality.*

VII. SUMMARY OF DEFECTIVE FILINGS

NATURE OF DEFECTS		SECTOR			TOTAL	
		Pharmaceuticals	Telecom	Public Funded Research	F-27s	%
QUANTITY	Undisclosed	13	58	8	79	38.3
	Indeterminate Units	71	-	-	71	58.1
VALUE	Undisclosed	11	58	13	84	38.3
	Foreign Denomination	4	-	0	4	0.1
MANUFACTURE	Location Undisclosed	27	74	8	109	50.3
LICENSING INFORMATION	Undisclosed	46	31	12	89	33.5
	Undisclosed Details	0	26	7	33	50.4
NON-WORKING	Reasons Undisclosed	10	3	15	28	66.7

IN THE HIGH COURT OF DELHI AT NEW DELHI

(Extraordinary Writ Jurisdiction)

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF A PUBLIC INTEREST LITIGATION

SHAMNAD BASHEER ... PETITIONER

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENTS

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