

NOVELTY IPR SEGREGATION AS MEANS OF SUSTAINABLE DEVELOPMENT

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Abstract: Since the creation of earth, the mankind has come a long way. Riding the wave of various inventions and innovations, we have crafted a world full of pleasure and luxuries. Something new is being invented in every nook and corner of the world every day.

In order to protect the interest of such inventors and interests of humanity at large, human race has formulated various laws and organizations for protection/enforcement of these laws. These laws protect the monetary interests of the creator and compensates the time and money cost incurred in the research and development. The world on the other hand, gets to use the latest technology but of course after paying patent royalty.

Intellectual property rights (IPR) laws have so far served as a fantastic tool to both creators and users. It has helped in generating breakthrough technology solutions available to world population. This provides solution to various problems that posed challenge to human race.

Although we are still uncertain if the Intellectual property rights (IPR) are the perfect solution to the bigger challenges that we are about to face. We are yet to evaluate whether IPRs are worth the amount of resources (time, labor & money) put in the creation process. There are also several loopholes faced at the time of expiry of IPR e.g. the creator can make minor modifications in the existing process and may file it as a new patent (cancer drug issue by international Drug Major Glaxo-smith-kline) thus using laws for personal benefits by exploiting the current system. Such instances not only defeat the core purpose of these laws and spirit of their constitution but also create threat to the vast natural resources at disposal. One wrong patent or usage of obsolete process could lead to huge wastage of resources. Plastic/polythene patents for example have lead to one of the biggest mistake of mankind. Though it has provided many

benefits but the hazard it has brought are not ignorable.

The time has come that the law makers become more responsible in their approach. Both pros and cons of a patent should be evaluated at the time of providing sanctions. The IPR should be evaluated not only on "short term solution centric" point of view but from "futuristic sustainable development" perspective as well.

This research paper discusses the feasibility of penalizing old/obsolete processes and using the same exchequer for subsidizing the new product/process inventions. Moreover, it also emphasizes on sustainable development over short term solutions and the role that IPR laws can play in bringing such a change.

Keywords: Feasibility; IPRs; obsolete; sustainable; solution.

*"Earth provides enough to satisfy every man's need, but not every man's greed."*¹

Introduction

The diversity that characterizes the material objects of any culture is proof that Novelty is to be found wherever there are human beings. If this were not the case, strict imitation would be the rule, and every newly made thing would be an exact replica of some existing artifact.²

Since the creation of earth, the mankind has come a long way. We have invented many things which have changed the world. Riding the wave of various inventions and innovations, we have crafted a world full of pleasure and luxuries. Something new is being

¹ A quote by Mahatma Gandhi.

² Basalla, George.(1988) *The Evolution of Technology*. Cambridge University Press. Pg-64.

invented in every nook and corner of the world every day. In order to protect the interest of such inventors and interests of humanity at large, human race has formulated various laws and organizations for protection/enforcement of these laws. These laws protect the monetary interests of the creator and compensates the time and money cost incurred in the research and development. The world on the other hand, gets to use the latest technology but of course after paying patent royalty.

We have developed the concept of Intellectual Property Rights (IPRs), In order to make the world aware of the intellectual creations and their possible usage, so that the other inventor does not put in efforts to create same thing which has already been created. Intellectual property rights (IPRs) laws have so far served as a fantastic tool to both creators and users. It has helped in generating breakthrough technology solutions available to world population. This provides solution to various problems that posed challenge to human race. Although we are still uncertain if the Intellectual property rights (IPRs) are the perfect solution to the bigger challenges that we are about to face.

The evolution of mankind to this invention sharing platform has been governed by various rules and laws but there has been no concrete law to promote and nurture the inventions and technologies for sustainable future centric development. The words like Patents, Inventors etc. conjure in the minds of most a vision of the solitary genius, the heroic individual - Edison, Bell, Morse -working late into the evening in a garage to perfect a device that will change the world. But while a few patents are in fact for inventions that change the world,³ most are not. Plastic/polythene patents for example have lead to one of the biggest mistake of mankind. Though it has provided many benefits but the hazard it has brought are not ignorable.⁴ We need to do a better job of understanding the risks of potentially catastrophic technologies⁵ as we move faster, live longer, and can

³ See, e.g., Allan Cohen, 10 Patents That Changed the World, IP WORLDWIDE; Aug. 2002, at 27 (identifying ten active patents “that have made a big difference—shaking up society for better or worse”).

⁴ The polythene carry bags has been banned because of the major environment concern.

⁵ Price, Huw. *Humanity's last invention and our uncertain future* (2012, Nov 25).

From the website of University of Cambridge.- [http://www.cam.ac.uk/research/news/humanitys-last-](http://www.cam.ac.uk/research/news/humanitys-last-invention-and-our-uncertain-future#sthash.sAQ6akzx.dpuf)

destroy at a ferocious rate. And we use our technology to do it.⁶

IPRs and Sustainable Development

The standard economic theory of intellectual property is well known. Intellectual creations are public goods, much easier and cheaper to copy than they are to produce in the first place. Absent some form of exclusive right over inventions, no one (or not enough people) will bother to innovate. Intellectual property rights are thus a "solution" to the public goods problem because they privatize the public good, and therefore give potential inventors an incentive to engage in research and development⁷ but if a scientist measures the speed of light, he still knows that speed no matter how many others also learn the answer from the scientist's publication of the experimental result. Others can make use of the information in their own work, perhaps refining the measurement or using the knowledge to build other useful tools or advance scientific theories. We do not give the first scientist any exclusive right in the experimental result, no matter how expensive or time-consuming the achievement, how creative the experimental apparatus, or how valuable the information is to society. The reason, of course, is intuitively clear to everyone: Most basic scientists do what they do without the incentive of IPRs in the information they produce, and we feel confident that science would progress much more slowly if every scientist had to seek permission to use the information generated by earlier scientists. Reward to the creative scientist comes, if at all, from prizes and recognition, not from IPRs.⁸

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⁶ *Humanity's last invention and our uncertain future* (2012, Nov 25).

From the website of University of Cambridge.- [http://www.cam.ac.uk/research/news/humanitys-last-](http://www.cam.ac.uk/research/news/humanitys-last-invention-and-our-uncertain-future#sthash.sAQ6akzx.dpuf)

⁷ For a discussion of the standard theory, see Mark A. Lemley, *The Economics of Improvement in Intellectual Property Law*, 75 *Tex. L. Rev.* 989 (1997).

⁸ Karjala, Dennis S. *Sustainability and Intellectual Property Rights in Traditional Knowledge* Website- http://www.americanbar.org/content/dam/aba/publications/Jurimetrics/_____/karjala.authcheckdam.pdf

A quarter of a century ago, the Brundtland report introduced the concept of sustainable development to the international community as a new paradigm for economic growth, social equality and environmental sustainability. It argued that sustainable development could be achieved by an integrated policy framework embracing all three of those pillars. Since then, the world has gained a deeper understanding of the interconnected challenges we face, and the realization that sustainable development provides the best opportunity for people to choose their future. At the same time, we face increasingly powerful drivers of change, including the impacts of current production and consumption patterns and resource scarcity, innovation.⁹

The IPRs and sustainable development are connected. The inventions and innovations based on the short term solution centric approach are likely to cause harm as observed in the case of plastic/polythene. For the purpose of economic growth, social equality and sustainability, the future centric approach is needed for an invention sharing platform.

IPR laws

The TRIPS agreement introduced intellectual property laws into the international trade and it remains the most comprehensive international agreement on intellectual property till date.

Patents must be made available for all "inventions, whether products or processes,"¹⁰ and must last for at least twenty years from the date of the filing of a patent application.¹¹ The clear inclusion of process patents within the required scope of coverage was of particular interest to the pharmaceutical industry.¹²

Article 28 provides that the patent holder must be given the exclusive right to make, use, offer for sale, or sell the patented product or the product made from the patented process.

GSK Drug

Authorities in India have revoked a patent on GlaxoSmithKline's breast cancer drug Tykerb, in the

latest intellectual property issue. The country's Intellectual Property Appellate Board upheld a GSK patent granted on the active pharmaceutical ingredient in Tykerb, lapatinib, citing innovative merit. However Tykerb is the salt form of lapatinib and the board decided it represents an incremental innovation. For the lapatinib compound, the drug remains subject to protection until the expiry of that patent in 2019. The patent covering lapatinib ditosylate salt would have gone out to June 2021. Intellectual property protection is an important aspect in ensuring that innovation is encouraged and appropriately rewarded.¹³

B.T. Brinjal Controversy in India

The Bt brinjal is a transgenic brinjal created by inserting a crystal protein gene (Cry1Ac) from the soil bacterium *Bacillus thuringiensis* into the genome of various brinjal cultivars. These Brinjal plantare found to be resistance against lepidopteran insects like the Brinjal Fruit and Shoot Borer *Leucinodes orbonalis* and Fruit Borer *Helicoverpa armigera*. In the absence of scientific consensus and opposition from state governments and others, the ministry decided to impose a moratorium on the commercialisation of Bt Brinjal until all concerns expressed by the public, NGOs, scientists and the state government were addressed adequately. Clearance of Bt Brinjal as a commercial crop by genetic engineering approval committee (GEAC) in October 2009 and then its ban by government of India in February 2010, and it became a point of debate whether Bt Brinjal should be commercialize or not.¹⁴

Such instances not only defeat the core purpose of these laws and spirit of their constitution but also create threat to the vast natural resources at disposal. One wrong patent or usage of obsolete process could lead to huge wastage of resources.

Conclusion

The time has come that the law makers become more responsible in their approach. Both pros and cons of a patent should be evaluated at the time of providing

⁹ "Resilient people, Resilient planet: a future Worth choosing", The Report of the United Nations Secretary-General's high-level panel on Global Sustainability

¹⁰ TRIPs Article 27.1.

¹¹ TRIPs Article 33.

¹² Sykes, Alan O., *TRIPs, Pharmaceuticals, Developing Countries, and the Doha "Solution"* Website- <http://www.law.uchicago.edu/Lawecon/index.html>

¹³ India revokes patent on GSK's Tykerb. (2013, Aug 02). Pharma Times Online.

Website- http://www.pharmatimes.com/article/13-08-02/India_revokes_patent_on_GSK_s_Tykerb.aspx

¹⁴ Rashmi Verma, PhD research Scholar, Graphic Era University Dehradun, India
Website- <http://www.sciencebeing.com/2013/02/bt-brinjal-and-its-controversy-in-india/>

sanctions. The IPR should be evaluated not only on “short term solution centric” point of view but from “futuristic sustainable development” perspective as well.

The resources which are already scarce are being used in manufacturing of products or, processes of manufacturing which are old/obsolete and poses a threat to the environment as well. There should be some concrete laws regarding use of old/obsolete environment harming products/processes, which are in use only because the manufacturing based on new inventions /innovations would require them to pay Patent royalty, and that will increase the cost of production and that will definitely effect the profit margins.

A new, fresh Segregation of the meaningful , useful IPRs from the profit- making , self-benefiting innovations and inventions should be done. Emphasis on sustainable development over short term solutions can bring such a change.

Can we come up with a mechanism for penalizing old/obsolete processes and the same exchequer shall be used for subsidizing the new product/process inventions for the benefit of the Mankind?

World Organizations like World Trade Organization (WTO), World Intellectual Property Organization (WIPO) should first attempt to define Old/Obsolete Product/Processes and then genuine efforts should be made to establish a Universal Mechanism for penalizing usage and manufacturing of these Products or, processes of manufacturing detrimental to Environment.

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