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EDITORIAL

"Covid-19 is a Public health emergency-that is fast becoming a human rights crisis"

Antonio Guterres

UN Secretary General

Dear Readers,

It gives me immense pleasure and pride to present before you the Special Edition of VBCL Law Review 2020, which is the compilation of selected research papers received from participants across the country for the One Day National Seminar (Online) organised by Vaikunta Baliga College of Law on the topic entitled "Public Health vis.a.vis. Economy in the wake of COVID-19".

It is an indisputable fact that, the world is currently facing the biggest ever international crisis resulting from hither to unknown novel corona virus, which has taken the entire globe within its grip of tentacles. The only ray of hope is a concerted global effort to contain the crisis. The impact of this pandemic is multifarious that its repercussions can be seen in socio-economic, cultural, political and human right spectrums. At this juncture, to assess the multi-dimensional impact of the pandemic on the society, the college had used the online platform and successfully organised a National Seminar on 26th May ,2020, by involving five eminent resource persons of national repute.

The continuous and compulsory lockdown has positive and negative effects on employment, health and health care systems, education, environment, media patents, international trade, international organisations and even on routine functioning of the judiciary. Still we couldn't overcome the havoc created by the virus. A number of thought-provoking articles covering all these aspects have been included in this edition.



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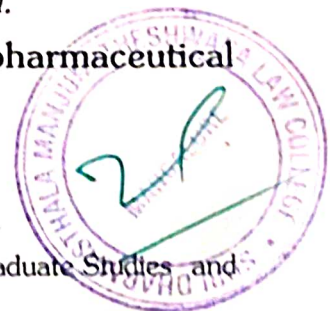
PATENTABILITY OF PHARMACEUTICAL DRUGS, MEDICINES, VACCINES AND ITS IMPACT

Smt. Shubhalakshmi P.¹

ABSTRACT

Intellectual Property is a special kind of property one can acquire by using knowledge, skill and mental ability for the invention of a new thing, or by bringing down the ideas in a systematic manner, or by composing, designing, forming some innovative practices which was not done earlier. Even invention of medicines, vaccines also considered as wonderful contribution to mankind during the outbreak of pandemics like COVID-19. Whatever innovation made by an individual or by a company on pharmaceutical drugs, medicines, vaccines are patentable in nature. But those invention should be novelty and process of invention not to be copied. There are different types of patents granted to pharmaceuticals like drug compound patent, formulation or composition patent, synergistic combination patent, technology patents, polymorph patents and biotechnological patent. So, pharmaceutical products, medicines, vaccines etc can be protected through patents but, when pandemic like COVID-19 attacks the whole population of the world, then protection under IP laws for medicines and vaccines can be justified or not is the question of this hour. The prime motive of any innovation or granting patent should aim at the well being of all along with granting benefits to the inventor or patent holder. That's why, patent ability should not come on the way of health and welfare of mankind.

Key words: Intellectual Property, COVID-19, pharmaceutical drugs, vaccines and medicines, patent ability.



¹Assistant Professor of Law, SDM Law College, Centre for Post Graduate Studies and Research in Law, Mangalore.

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INTRODUCTION

To consider any invention to grant patent, it requires to fulfil three main conditions. One is novelty or invention must be new one which was not present before, second one is inventive steps for the invention. Third one is usefulness or industrial application.²

The goods which are invented will be traded in national and international level. The one who invented a particular good or thing will reap the benefit of his efforts by putting it to the market. The Indian Patent Act 1970 governs the patent system in India. This Act was amended in 2002, and again in 2005 to accommodate India's obligation as a signatory to the agreement on Trade-Related Aspects of Intellectual Property.³

Whenever a new good or thing is invented, inventor will apply for patent and once the patent protection is received, then such invented thing can be utilised and managed financially by the inventor or patentee only. Even in the case of vaccines, pharmaceutical drugs or medicines, only the pharmaceutical company that holds the patent is allowed to manufacture in the market the drug and eventually make profit by using the same. Once the patent has expired, other companies can manufacture and start selling the same in the market.⁴

In case of life saving drugs or vaccines and medicines, patent holders' rights should not be exclusive because life saving drugs or generic medicines become costly or difficult to be affordable for reasonable price then it will affect the whole mankind. So, legal right also should accompany certain ethical aspects, moral and humanitarian principles.

During these pandemics like COVID-19, all the countries of the world should come together and they have to support the experts to make innovation on medicines or vaccines and should make available to the patients who are suffering from the disease. Even if royalties provided are at a minimal level, the revenues would still be in billions of dollars as the population affected by the pandemic is large in number who are in need of treatment.⁵

REJECTION OF PATENT APPLICATION

If inventions are not fulfilling all the criteria to consider any invention for patent, then patent application will be rejected. If the invented goods, or things, or of any medicinal preparation is already in existence or if it

- 2 CHANDRASEKARAN A., INTELLECTUAL PROPERTY LAW, (C. Sitaraman and Co. Ltd, 2018 Chennai).
- 3 PAUL TORREMANS, INTELLECTUAL PROPERTY LAW, (2nd Ed, Oxford University Press, Great Britain).
- 4 Ananya Mandal, Drug Patents and Generic Pharmaceutical Drugs, News Medical Life Sciences, (May 23, 2020, 10am) <https://www.news-medical.net/health/Drug-patents-and-generics.aspx>.
- 5 Pratibha M. Singh, Needed: A Pandemic Patent Pool, THE HINDU, May 01, 2020.

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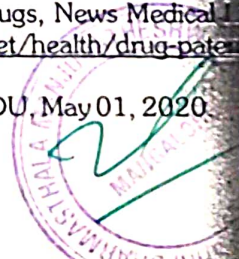
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At present, a pandemic, and le United States of A to combat this ep solution to come can say that, vac the human life b sanitisers, maint which we have to which we are faci

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- 6 NARAYANAN New Delhi).
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wanted good is an admixture then patent cannot be granted. The process of preparation also very important for patentability. Under Patents (Amendment) Act 1999 a claim for a product in respect of an innovation relating to medicine or drug can be made subject to certain exceptions which relating to chemical used in the manufacturing of medicine or drug.⁶

All of us know the decision of India's Supreme Court by rejecting Swiss drug Novartis patent for anticancer drug Gleevec in a ruling to support access to cheaper or affordable generic medicines. In the beginning the Patent office in India at Chennai, rejected the Novartis application for the reason that a minor change was made in the medicine Glivec as Gleevec and it will be difficult to get for cheaper price.⁷

One more patent application was filed for herbal composition effective for an disorder and process of preparation which also includes extracts of certain subject matters of traditional knowledge like Neem, chaksu, etc. If it is patented then common people will get affected because affordability is not easy for the patented item or medicines.

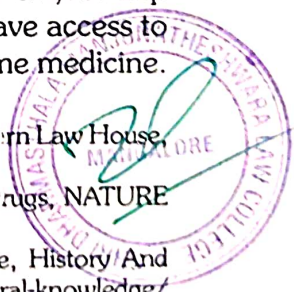
IMPACT OF PANDEMIC AND STAND OF DEVELOPING NATIONS

We celebrate April 26th every year as World Intellectual Property Day, but this year it is not the day for celebration but to provide us an opportunity to reflect upon the role of intellectual property in the ongoing health crisis like COVID-19 and to dedicate intellectual property to find a solution to the same. The common public good must be the motive to create and recognise patent rights.⁸

At present, all the economies of the world are suffering from this pandemic, and least developed countries are the worst sufferers. Even, the United States of America and England also facing lots of problems and trying to combat this epidemic. Developing economies also putting an effort to find a solution to come out from this crisis. By looking in the present condition we can say that, vaccines and medicines are the only permanent solution to set the human life back to normal condition. Be at home, wear mask, use sanitisers, maintain social distance etc are only precautionary measures which we have to follow but they are not permanent solution to the problem which we are facing in this juncture as a result of out break of COVID-19.

Usually developing economies like India, Brazil, Argentina etc, develop their own Intellectual Property Laws by facilitating people to have access to cheaper generic medicines than the patented version of the same medicine.

⁶ NARAYANAN P, INTELLECTUAL PROPERTY LAW, 19,(3rd Ed, Eastern Law House, New Delhi).
⁷ Padma TV, India Court Ruling Upholds Access To Cheaper, Generic Drugs, NATURE MAGAZIN, APRIL 1, 2013.
⁸ Shikha Goyal, World Intellectual Property Day 2020: Current Theme, History And Facts, (22nd May 2020, 11am) <https://www.jagranjosh.com/general-knowledge/world-intellectual-property-day-1524662348-1>



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But developed countries make allegation against these methods and force them to revise the IP laws. For instance, the Government of Argentina developed IP laws to provide generic medicines to the needy of the country at affordable price but the US made an allegation for the same. Argentina had to revise its IP law for the pressure of the US and as a result later when there was economic crisis in Argentina, they suffered a lot in need of low-cost medicines to come out from sufferings. Even the US challenged the IP law formulated by Brazil still Brazil did not revise its IP law but continued to provide health treatment and generic medicines in affordable price.⁹

CAROLINE DOMMEN,

'RAISING HUMAN RIGHTS CONCERNS IN THE WORLD TRADE ORGANIZATION -

WAY TO FIND SOLUTION

Now Governments and International Organisations need to arrive at a consensus in advance to prevent exclusive claims on medicines if prepared in the wake of COVID-19. Invention should benefit patients as well as the whole world. But there will be a question on the part of inventor or patentee that what benefit he can derive from his invention. Yes, there are several flexibilities under TRIP's itself like compulsory licensing which are available to access to medicine which is patented one.¹⁰

According to Paul Hunt, UN Special Rapporteur on the Right to Health, human rights can play a positive role in defining national trade policies that are equitable, attentive to the particular needs of the most vulnerable and respectful of human rights. He has stated that, a country should be able to enjoy essential medicines and life-saving drugs with help of trade policies. And, developing country should use available TRIP's flexibilities to ensure the availability of low-cost versions of the drug and it must be accessible for all within the country, especially those living in poverty.¹¹

Recently, Cancer Patients Aid Association requested the health minister to revoke the Indian Patent on Remdesivir, a potential anti-viral drug used for testing for coronavirus patients. This medicine produced by Gilead Sciences. Now several drugs are in the clinical trial stage and combination of drugs used to treat HIV that is Lopinavir and rotonavir also tested to combat SARS and COVID-19. Drugs to treat Hepatitis-C, Ebola, also tested in this regard.

9 24 Caroline Dommen, 'raising Human Rights Concerns in the World Trade Organization - Actors, Processes and Possible Strategies,' HUMAN RIGHTS QUARTERLY, 13 (Johns Hopkins University Press).

10 DR. WADEHRA B L, LAW RELATING TO INTELLECTUAL PROPERTY, 38 (5th Edition, Universal Lexis Nexis, Haryana 2019).

11 Caroline Dommen, Trade and Human Rights, Towards Coherence, INTERNATIONAL JOURNAL OF HUMAN RIGHTS, (May 23, 2020) <https://sur.conectas.org/en/trade-and-human-rights-towards-coherence>.



CONCLUSION
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CONCLUSION

To conclude, we can say that, there are number of patents granted for process of preparation as well as invention of pharmaceutical drugs and vaccines. Medicinal items also patentable in nature provided they fulfil all the basic requirements for patentability. But patentability should not come as hurdle on the way of protection of health and life. Medicines especially life saving drugs must be made available for cheaper price and they should be affordable for common man. Then only we can respect Intellectual Property and inventor in the real sense.

