

22 September 2009

To  
Shri Anand Sharma,  
Hon'ble Minister of Commerce and Industry  
Udyog Bhawan, Rafi Marg,  
New Delhi

Sub: Concern over Harmonisation of Patent Administration

Dear Sir,

We are writing to you to express our grave concerns over the efforts at WIPO to bring in new global IP infrastructure to harmonize the patent administration.

Over the years, with the intensification of globalised trade, harmonization of patent law worldwide has become an important goal of intellectual property and trade negotiations. Most of these IPR-Trade negotiations are pursued under the auspices of the World Intellectual Property Organization (WIPO).

Developed countries and MNCs have been lobbying aggressively for harmonization of the major substantive aspects of patent law such as grace period, prior art, novelty and inventive step at the global level. Substantive Patent Law Treaty (SPLT) proposed at the WIPO is meant to address the issues and concerns raised by developed country IP holders.

Recently, WIPO organized a Global Symposium of Intellectual Property Authorities on 17-18 September 2009, at the International Conference Center Geneva (CICG). The Symposium 1) provided heads of IP authorities, industry leaders and other stakeholders with an international forum in which to discuss how the present intellectual property infrastructure, could be developed in a coherent way to support increasingly borderless activities for innovation within science and technology communities and industries; 2) Presented WIPO's new vision and strategy for reinforcing and integrating different technical components for developing the global IP infrastructure; 3) involved users of the IP system in the process and create stronger networks between IP authorities and industry/IP practitioners.

In order to speed up the harmonization process efforts have already begun in WIPO. There is a move to dismantle the Standing Committee on Information Technologies (SCIT), which was established by the General Assembly in 1998 to serve as a forum to discuss issues, facilitate coordination and provide guidance concerning the implementation of the WIPO global information network (WIPONET) and the provision of IP information services on the network. It was mandated to formulate recommendations and policies on the network and related matters and submit the same for approval to the General Assembly. SCIT will soon be replaced by Committee on WIPO Standards (CWS), and a Committee on Global IP Infrastructure (CGI).

To our understanding these efforts are oriented towards setting up a system for aggressive harmonization of patent administration networks. The harmonization agenda designed by the developed countries and MNCs has to be seen with a lot of caution. Ever since the early 1980s, there have been concerted efforts

to bring in harmonization of patent administration. These efforts had been strongly opposed by developing countries. The Trilateral Cooperation which was negotiated by Japanese Patent Office (JPO), European Patent office (EPO) and United States Patent Office (USPTO) had the objective that

*‘[T]hrough harmonization and development of industrial property administration and protection of industrial property rights, the Trilateral Offices strive to contribute to an increasingly efficient worldwide patent system in the 21st century’.*

Consequently, this trilateral co-operation led the way to the formation of Patent Prosecution Highways (PPH). The harmonization of patent office administration in developed countries are realized through the MoUs for administrative collaboration between patent offices. Initiatives such as Patent Prosecution Highways (PPH) initiated by the USPTO and JPO one of the best examples. According to the provisions of PPH, search and examination work of the office of first filing can be used while processing the same application in the office of second filing.

Patent examination is one of the substantive aspects of patenting. If it is done judiciously, it can facilitate better industrial development and better access to medicines. For instance, Tamiflu, that is used extensively for the treatment of H1N1 flu (Swine flu) across the world is an off-patented drug in India. Hence it is cheaper in the Indian market. On the contrary, in most of the developed countries, tamiflu is a patented medicine and is exorbitantly priced. Similarly, the Indian patent office has rejected many foreign patent applications of pharmaceutical substances that are used in medicines such as tenofovir, darunavir (HIV/AIDS) and imatinib mesylate/Glivec (leukaemia) on the ground that the applications did not satisfy novelty as required by the Section 3 (d) of the Indian patent act. Generic industry in India has benefitted enormously from these off patented drugs. An important fact to be noted is that it has also ensured better accessibility to comparatively cheaper drugs in India and other developing countries.

Depending upon the provisions available in the domestic laws, the scope and coverage of patent protection differs from country to country. It should be noted that provisions of the patent act is a reflection of the ground realities of that country. For example, both India and Thailand have inserted more pre-grant safeguards in their patent laws to protect the public health needs viz., provisions to curb “ever-greening” of patents, higher inventive step/utility criterion, pre &/or post grant opposition at patent offices are some of the important safeguards. It should also be noted that TRIPS and the Doha Declaration allow countries some leeway in moulding their patent system according to their domestic needs, present state of development, and to address public health needs

From the past experience, it is a well documented fact that weak examination standards of developed countries, especially in the US, have resulted in mushrooming of frivolous patents. This has contributed to manifold increase in the number of patent filings and patent litigations. Transaction cost is skyrocketing to unsustainable levels. The question before us is that is this the model we want to replicate in India?

One-size-fit-for-all approach to the global IP infrastructure needs to be opposed, if the growth and development of domestic industries and public health are the real concerns of the Indian government. The harmonization of patent administration will have serious implications for both the industry as well as public health. It will impede local innovation and technological development in developing countries by restricting access to patented knowledge held by the foreign IP creators. Increasing number of patenting of innovators from US, Japan and EU through PCT filing is an example of this. In the guise of capacity building of HR in developing countries, the flawed model of IP culture is being instilled among the patent examiners of the developing countries by the developed countries. The despicable fact is that this is done in connivance with the local industrial organizations and the government officials.

In the light of above mentioned issues and concerns,

**WE URGE THE GOVERNMENT**

- To oppose any effort at WIPO General Assembly on harmonization of patent administration as it can fundamentally change the way in which substantive decisions about granting patents are taken by the patent offices in developing countries.
- To question the rationale of establishing new Committee on WIPO Standards (CWS), and Committee on Global IP Infrastructure (CGI).
- To take necessary measures to defend the domestic policy space as well as the public health safeguards available in the TRIPS Agreement and Doha Declaration.
- To facilitate enhanced south-south co-operation in promoting alternate innovation models as opposed to the IP centric model pushed forth by developed countries.
- Not to welcome any capacity building programmes from the developed countries which promote an IP culture that is detrimental to Indian industries as well as public health.

We, the undersigned civil society organizations wish to strongly urge the Government of India to consider the above stated issues and concerns.

**Initiative for Health Equity & Society(IHES), Indian Network for People Living With HIV/AIDS, All India Drug Action Network(AIDAN), Diverse Women for Diversity, International Peoples Health Council ( South Asia ), Drug Action Forum –Karnataka(DAF-K), Center for Legislative Research and Advocacy (CLRA), SATHI-CEHAT, Knowledge Commons, International Treatment Preparedness Coalition-India, Delhi Science Forum (DSF), All India People’s Science Network(AIPSN), LOCOST, Centre for Health and Social Justice (CHSJ), National Working Group on Patent Laws(NWGPL), IT for Change, Centre for Internet and Society (CIS) and Centre for Trade and Development (Centad).**

CC to:

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| 1) Shri. Jyotiraditya Scindia<br>Minister of State<br>Ministry of Commerce & Industry<br>Udyog Bhawan, Rafi Marg,<br>New Delhi   | 2) Shri. Gopinathan<br>Permanent Representative of India<br>Rue du Valais 9 (6th Floor)<br>1202 Geneva<br>Fax: +41 22 906 86 96<br>Email: <a href="mailto:mission.india@ties.itu.int">mission.india@ties.itu.int</a> |
| 3) Shri. Ajay Shankar<br>4) Secretary<br>Department of Industrial Policy and<br>Promotion<br>Udhyog Bhawan<br>New Delhi<br>Email- <a href="mailto:a.shankar@nic.in">a.shankar@nic.in</a> | 5) Dr.Rahul Khullar<br>Secretary<br>Ministry of Commerce<br>Udyog Bhawan,<br>New Delhi   |

