



POLICY UPDATE

The Patents (Amendment) Bill passed by Indian Parliament

The Indian Parliament has passed the Patents (Amendment) Bill 2005 that would replace the Patents (Amendment) Ordinance 2004 earlier issued by Government of India in December 2004. The Patents (Amendment) Bill 2005 introduces product patent regime for products of foods, chemicals and pharmaceuticals. India was required to introduce product patent protection in these sectors from 1.1.2005 in accordance with the obligation under the TRIPS Agreement of the WTO. To fulfill this requirement, Government of India had issued an Ordinance in December 2004. The Ordinance was to be approved by the Parliament. While introducing the Patents (Amendment) Bill 2005 in the Parliament, Government introduced certain changes from the provisions in the Ordinance. Both the Houses of the Parliament approved the Bill with these amendments.

Salient features of the Patents (Amendment) Bill 2005

- Extension of product patent protection to products in sectors of drugs, foods and chemicals.
- Introduction of a provision for enabling grant of compulsory licence for export of medicines to countries which have insufficient or no manufacturing capacity; provided such importing country has either granted a compulsory license for import or by notification or otherwise allowed importation of the patented pharmaceutical products from India (in accordance with the Doha Declaration on TRIPS and Public Health).
- Modification in the provisions relating to opposition procedures with a view to streamlining the system by having both pre-grant and post-grant opposition in the Patent Office. A period of 6 months from the date of publication of the patent application has been provided for filing pre-grant opposition application. A provision has been made for hearing at pre-grant opposition stage and the person filing pre-grant opposition application could become a party to the proceedings.
- Patent rights in respect of the mailbox applications shall be available from the date of grant of patent.
- Rationalization of provisions relating to time-lines in patent granting procedures with a view to introducing flexibility and reducing the processing time for patent applications, and simplifying and rationalizing procedures.
- A new provision has been introduced that provides that the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant, shall not be patentable.
- After a patent is granted in respect of applications made under mailbox, the existing manufacturers of such products could continue to produce such products by paying reasonable royalty to the patent holder.
- The reasonable time period for making efforts to get a voluntary license from the patent holder before applying for a compulsory license shall not ordinarily exceed six months.

More details regarding the changes introduced in the Bill are available at

<http://pib.nic.in/release/release.asp?relid=8096>

The Patents Act and further amendments are available at

<http://ipindia.nic.in/ipr/patent/patents.htm>

Forthcoming visit

- Finance Minister of India Mr. P. Chidambaram, will be visiting Washington D.C. on 15-17 April 2005 to attend IMF-World Bank Spring Meetings. Finance Minister is also attending an Investment Meet organized by CII in Chicago on 14 April 2005 and a dinner meeting with CEOs of leading US companies organized by US India Business Council on 15 April 2005.
- Indian Minister of State for Science & Technology Mr. Kapil Sibal is attending Investment Meets organized by CII at Seattle on 8 April 2005 and San Francisco on 9-11 April 2005.
- The Governor of Virginia Mr. Mark Warner is leading a business delegation of 40 leading companies to India on 26-29 April 2005.
- Mr. Kiran Karnik, President, NASSCOM is leading a delegation of IT companies to New York and Washington DC in first week of April 2005.

Women workers to be allowed to work in night hours in India

Government of India has decided to amend the Factories Act 1948, which will allow women to work in the night shift between 7 pm and 6 am. To enjoy the flexible work norms, factory owners will have to provide transportation facility to women working in the night shift and ensure adequate safeguards, including occupational safety and protection of their dignity.

<http://pib.nic.in/release/release.asp?relid=8226&kwid=>

India and MERCOSUR sign PTA

On March 19, 2005 **India and MERCOSUR** have signed an Agreement to operationalize the **Preferential Trade Agreement (PTA)** that was signed in January 2004. According to the Agreement, India has given tariff preferences over 450 products at 8-digit level and MERCOSUR has given tariff preferences over 452 products; tariff concessions ranging from 10% to 100%; Rules of Origin providing for 60% value-addition; and safeguard measures and dispute settlement procedures available to members on fast-track which will be in addition to the redressal mechanisms available in the World Trade Organization (WTO).

http://commerce.nic.in/india_rta_main.htm

VAT implemented in 21 states in India from April 1, 2005

Value Added Tax (VAT) has been implemented in India in 21 out of 29 states from April 1, 2005 in place of existing regime of Sales Tax. VAT is levied on the value added to goods at each point of sale. It would cover 550 goods and have two basic rates of 4% and 12.5%.

NEWS HIGHLIGHTS

- The **G-20 Ministerial Meeting** – an alliance of developing countries in WTO negotiations, with a focus on agriculture – concluded in New Delhi on March 19, 2005. Trade and Agriculture Ministers and officials from Argentina, Brazil, Bolivia, Chile, China, Cuba, Egypt, Guatemala, Indonesia, India, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Tanzania, Thailand, Venezuela and Zimbabwe participated in the meeting. Trade Ministers from Benin, Guyana, Rwanda, and Zambia also participated as coordinators of ACP, CARICOM, Africa Group and LDCs. The G-20 has called for substantial reductions in trade distorting domestic support by developed countries and elimination of all export subsidies in the field of agriculture within five years, with front-loading of commitments. The Ministers reaffirmed the commitment to progress in the Doha Round of WTO trade negotiations in 2005 with a view to arriving at an Agreement on the modalities for negotiations during the Sixth Ministerial Conference of the WTO scheduled to be held in Hong Kong in December 2005.

<http://pib.nic.in/release/release.asp?relid=7976&kwid=>

- In his address to the PHD Chamber of Commerce and Industry on March 21, 2005, Indian **Prime Minister Manmohan Singh said India is poised to deliver 7-8 per cent economic growth** in the next fiscal year.
<http://pmindia.nic.in/speeches.htm>
- The Request for Proposal for inviting bids for the **re-structuring and modernization of Mumbai and Delhi airports** was issued by the Ministry of Civil Aviation. The Airports Authority of India has made a preliminary estimate that capital investment up to \$ 1938 million and \$ 1422 million will be required for modernization and restructuring of Delhi and Mumbai Airports respectively. The first phase of modernization/expansion through two separate Joint Venture Companies is proposed to be completed by 2010.
- Government of India has approved 4/6 laning of 10,000 km (6215 miles) of National Highways under the **National Highways Development Project** Phase III for \$12.2 billion.
- Reserve Bank of India (RBI) has for the first time released details of **India's invisibles** in RBI Bulletin March 2005
<http://www.rbi.org.in/sec2/61690.pdf>.
- **United Breweries (UB) Group of India has emerged as the second largest liquor manufacturer** by volume in the world after acquisition of an Indian company Shaw Wallace.
- **Moody's Investor Services has assigned Tata Steel of India a 'Baa2' rating** with stable outlook which is one notch above Moody's current sovereign rating for India of Baa3 and is also the highest rating for an Indian company.
- With introduction of product patent regime in India, Glaxo Smith Kline (**GSK**) is now looking for acquisitions in India. GSK managing director, S Kalayanasundram said the company would go for the inorganic growth route in India.
http://www.financialexpress.com/fe_archive_full_story.php?content_id=84647
- **HSBC Holdings Plc** has finalised an infusion of \$243 million into its Indian operations over the next 3-4 months to support 'organic growth', even as it is considering floating a 100% wholly-owned non-banking financial company (NBFC) to boost its retail finance business.
http://www.financialexpress.com/fe_archive_full_story.php?content_id=84956
- India's long term and short term **foreign currency rating has been upgraded** by the global rating agency Standard & Poor's (S&P) to 'BB+', with a stable outlook.
- PepsiCo President Indra Nooyi announced investments of \$300-500m over the next 3-5 years in India.