

## **Changing times for patenting in India**

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*Changes in Indian patent legislation are predicted to drive industrial change and foreign investment in India, with a corresponding increase in demand for timely, reliable access to Indian patent data.*

### **Patents Act amendments**

On December 27 2004, the Indian government announced amendments to its Patents Act—just in time for the January 1 2005 deadline previously set for meeting their TRIPS (Trade Related Aspects of Intellectual Property Rights) obligations to the World Trade Organization (WTO).

Until now, the Indian manufacturing landscape has been greatly shaped by the provisions of the Patents Act of 1970, whereby Indian patent law only permitted patenting for processes and product patents. This was a key driver in the growth of the generics market in particular, but also had significant implications in other major growth industries like software, food, pharmaceuticals and agrochemicals. Many companies were set up to reverse engineer new drugs patented in other countries and develop a new method of production.

### **Signing up to TRIPS**

In 1994 this well-established commercial environment began to change, when India signed the TRIPs Agreement. The TRIPs Agreement aims to establish common international rules for the minimum protection provided by a government to the intellectual property from other WTO members. India was given a 10 year transition period in which to become compliant with the regulations laid down by the WTO, and so had until January 1 2005 to meet the minimum standards regarding intellectual property.

In December 1998, India joined the Paris Convention and signed the Patent Cooperation Treaty. The first steps towards TRIPS compliance came with an exclusive marketing rights agreement for new products. This was then supplemented in 1999 by an amendment to the Patents Act. This gave inventors the right to file for patents for new products in India, for which they would be granted exclusive marketing rights, if they had filed an application in a WTO member state. A second amendment to the Patents Act in 1999 increased patent

protection to 20 years from filing, bringing India in line with the term of protection granted by the majority of other countries.

### **Outsourcing to experience growth**

These changes to the Indian Patent laws will undoubtedly encourage domestic drug companies to invest more heavily in R&D as potentially this will become a more lucrative market. Another area that is likely to experience growth as a result is outsourcing to India, with the pharmaceuticals industry poised to follow IT and call centres. The pharmaceuticals industry alone has an outsourcing market of approximately \$50 billion per year, and India could gain a large share of this through outsourcing deals spanning all stages in the drug development pipeline, in particular initial R&D, clinical trials and manufacturing. This could result in a large decrease in the cost of bringing a new drug to market.

### **Software patenting—fuel for debate**

Although the bulk of media comment to date has been on the impact of the new legislation for the pharmaceuticals industry and the costs of drugs to consumers, less attention has been paid to the potential implications for the software industry. Under the new law, computer programs, mathematical methods, business methods and algorithms will still not be patentable. However, the technical application of computer programs in industry or in combination with hardware is now considered patentable if other basic patenting requirements—novelty, inventive step (non-obviousness) and industrial application (utility)—are met.

This could lead to increased patenting in many areas, including cell phone technology. What happens in practise will largely depend on how the new definitions are applied by the examiners at the Indian Patent Office. Given the contentious history of software patenting in Europe, the US and Japan, it seems safe to assume that the changes to Indian software patent legislation will provide further fuel for the global debate.

By meeting obligations under TRIPs, India is not only opening its border to export but is also increasing its potential to become a global centre for R&D, contract research, manufacturing, clinical research and alliances with global pharmaceutical companies. As the associated levels of foreign investment in India increase, the demand for timely reliable access to Indian patent information will also grow.

## **Indian patent coverage in Derwent World Patents Index**

In response to the new significance of India as a patenting authority, the coverage of *Derwent World Patents Index*<sup>®</sup> (*DWPI*<sup>®</sup>) is being expanded to cover Indian patent pre-grant applications (national filings & PCT transfers) and granted patents, published from December 4 2004 onwards. This will ensure that users of all of Thomson Scientific services containing *DWPI* data—including *Thomson Pharma*<sup>SM</sup>—will have access to all new Indian patent data issued since new patent legislation took effect.

The latest estimate is that Indian patent data will appear for the first time in *Derwent World Patents Index*<sup>®</sup> *First View* (*DWPI First View*) at the end of February 2005, and ongoing will be available approximately two weeks from publication. Fully indexed records—including Derwent Classification, manual coding, chemical indexing and enhanced polymer indexing—will typically appear in *DWPI* four to six weeks after publication. Chemical structures will also be covered in the *Derwent Chemistry Resource*.

### **Additional information**

For full details of Indian patent number formats in *DWPI* please visit:

[www.thomsonderwent.com/coverage/latestupdates/inpatcov/](http://www.thomsonderwent.com/coverage/latestupdates/inpatcov/)

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