

AN INTRODUCTION TO THE GUIDING PRINCIPLES IN THE DECISIONS ON PATENT LAW. Compiled and Edited by K.V. Swaminathan, Delhi : Bahri Brothers, 2000, Pp. XXII + 376, Rs. 495/-.

In the recent years, Intellectual Property Rights (IPRs) has emerged as a major issue in international economic relations and bilateral commercial negotiations. It has also become a subject of discussion and debate in various circles within the country. Its importance in technology development is well recognised as major industrial organisation take investment decisions keeping in view the protection available to inventions. The Uruguay Round of Multilateral Trade Negotiations, the signing of the Final Act on General Agreement on Tariffs and Trade (GATT) and introduction of the issues of effective protection of IPRs, effective enforcement of such rights and other related issues and establishment of World Trade Organisation (WTO) provided momentum to the trend towards strengthening of the intellectual property protection regime.

IPRs refers to creation of human intellect. It is the legal expression of privileges granted by the State for the use of creation. Intellectual property is inherently intangible. It relates to items of knowledge and to information which can eventually be incorporated or embodied in limitless number of tangible things or goods all over the world. The Property is indeed in the knowledge and information embodied in them or associated with their products.

A patent is legally enforceable right granted by the Government to inventor for a limited period to make, use and sell the product or the process of his invention to the exclusion of others. In fact, it is a form of reward given by a State to inventors in return for the disclosure of his invention by virtue of which the patent holder enjoys a monopoly right for a limited time. For the patent to be granted, the invention must be new, non-obvious and useful. A sound and strong patent system encourages investment in research and development in order to bring about new and useful inventions and also protects inventors from their inventions being copied or pirated by others. Since inventions and the rights have potential use in the global market beyond geographical limits of a State, international conventions have come into being, setting rules and guidelines in the exploitation of patents.

The Uruguay Round of multilateral trade negotiations resulted in the Agreement on the Trade Related Aspects of Intellectual Property Rights

(TRIPs). This recognises the IPRs as private rights and set certain minimum standards to be adopted by the Parties for protection of such rights. It also recognises the special technological needs of the least developed countries and set some time-frame in which other countries will make necessary changes in their own laws to comply with the required degree of protection. India and other developing countries were given a transition period of 5 years (w.e.f. 1.1.95) under Articles 65 to apply the provisions of the TRIPs Agreement. Countries that do not provide product patents in certain areas can delay the implementation of the provisions on product patents for another five years. However, they have to provide exclusive marketing rights (EMRs) for products which obtain patents after 1.1.95.

There are seven areas of IPRs covered by the TRIPs Agreement. These are : Copyrights, Trade Secrets, Industrial Designs, Integrated Circuits, Geographical Indications and Patents. Except in case of Patents, in all the six other areas India's policies, law and regulations, administrative and judicial systems were in line with those prevailing in the rest of the world. It was only in case of Patents, that there was a sharp divergence between the Indian Patent law and the new IPRs.

In India the patent system, in one form or the other, was in vogue since 1856. The Indian Patents and Design Act of 1911 conferred on the inventor monopolistic rights for products as well as processes. It was later felt undesirable to grant patents in respect of items / substances which are of basic necessity to life, i.e., food, drugs and medicines and chemicals. The Indian Patents Act 1970, emphasised on optimum balance between the monopolistic rights of the inventors and public interest.

India is a party to the TRIPs Agreement and has agreed to amend its law to provide for product patent and all other stipulations in the Agreement including the interim arrangement for grant of EMRs. To comply with the said obligations, the Indian Patents Act, 1970 was drastically amended by the Patents (Amendment) Act, 1999. Most significant aspect of the amendment is that inventors can now obtain product patents for pharmaceuticals unlike in the past when it was limited to process patents only. India has retained the option for a ten year transition period for granting these patents. In the interim period it would, however, grant EMRs as pipeline protection mechanism for such products.

Hence, considerable interest has been aroused in India in the field of IPRs in the recent years. It is in this context that the book under review is very timely and invaluable. The book is a compilation of large number of typical decided cases on patent law from different parts of the world.

It contains 101 selected cases from 15 countries. Most of these decisions (92) were pronounced in the last five years and will be of practical interest in the new regime of protection of intellectual property.

The author has very carefully grouped these 101 cases into 11 major groups. These groups are Patentability, Novelty, Obviousness, Disclosure, Aspects Relating Grant, Special Issues, Jurisdiction, Infringement, Relief, Revocation and Procedures. The first four groups have dealt with the basic requirements to obtain a patent. The section on Special Issues has identified very important aspect such as Broad Patents, Doctrine of Equivalents, Compulsory Licenses, Parallel Imports and Exhaustion as well as Supplementary Protection. The next three groups deal with the type of legal disputes and remedies that follow in a patent dispute resolution. The section on Infringement has dealt with a wide range of situations in which the decisions on infringement disputes are presented. The chapter on Relief has specifically highlighted the need for a minimum relief in the form of an injunction as well as the punitive part relating to awarding damages. The Revocation of Patent in which the rights granted by patents are withdrawn has also been treated in a very clear-cut manner. This grouping of the cases into distinct subject areas makes the presentation reference friendly and provide continuity from chapter to chapter.

Each case is reported in a standard format having a clear indication of the issues involved, the factual background and the court decision supplemented by the observations highlighting the basic general principles involved in each case. The author attempted to deduce certain guiding principles which would be useful in a variety of new cases that will come up for adjudication.

The groupwise classification of decisions is preceded by an Overview which presents analysis of court rulings pertaining to each specific group and the propositions that emerge out of the analysis. Such an analysis would afford a glimpse of important decisions and facilitates reader's perception of the issue involved in each group of cases before actually turning over to the relevant group for an elaborate study.

The book also contains two annexures. The first annexure presents three cases from India and Canada decided by the Appellate Body of WTO to illustrate that their decisions have a mandatory effect on the change to be made in the national law to ensure compliance with the TRIPs Agreement. The second annexure deals with the important recent developments on "Patenting of Biotechnology" and "Examining the Patenting to Business Method Practices". They present the emerging

and evolving criteria for patentability on newer developments arising from advances in science and technology. The book ends with a Subject Index.

The author deserves to be congratulated for his taking pains in compiling such an invaluable book on an important subject which has gained significance throughout the world. As TRIPs Agreement would perhaps constitutes a broad basis on which many legal systems in different countries of the world would have adapted, the compilation will prove very useful to the teachers and the students of IPRs in the country. The book is worth keeping in all the libraries.

The book has been priced at a very reasonable price of Rs. 495/-. It is highly praiseworthy on the part of the publisher, Bahri Brothers, who have beautifully published the book on a topical issue.

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