



THE FINANCIAL EXPRESS

India seeks to weed out patents infringing traditional knowledge

Soma Das & Timsy Jaipuria
New Delhi, Aug 10

INDIA has had some success overseas in scuttling patenting of products reliant on India's traditional knowledge, but what about such patents here? The government has belatedly woken up to the prospect of multinational pharmaceutical giants obtaining patents in India that infringe upon India's traditional knowledge.

Sources familiar with the matter told *FE* that patent applications pending over the last three years filed by Abbott Labs, Novartis, AstraZeneca, Pfizer, Bayer Healthcare, P&G and Colgate Palmolive and others may be

turned down by the Indian patent office, citing traditional knowledge of India. These applications have been verified against India's database in this regard—the **Traditional Knowledge Digital Library (TKDL)**. More importantly, sources said, some

such patents that have already been awarded in the last six years without referring to the **TKDL** may even have to be revoked, potentially triggering litigation.

The sources said patent controller general Chaitanya Prasad has set up an in-

ternal committee to review patents granted since 2005. The objective is to weed out patents that have been erroneously granted overlooking the documented traditional knowledge of the country.

But the fact that bad patents were granted without paying

any heed to the documented traditional knowledge would come as a huge embarrassment for Indian patent authorities, analysts said.

Here is an instance of a patent allegedly enabled by India's traditional knowledge. Earlier this year the Chennai patent office approved a patent to the Bangalore-based Avesthagen on a composition that comprised jamun and cinnamon extracts (1076/CHE/2007) on an application filed in 2007. Ironically, this is the same patent that the Indian government had made a hue and cry about and stopped the European Patent Office (EPO) from granting a few years back.

■ **Continued on Page 2**

WAKING UP TO THREATS FROM MULTINATIONALS

- Over 100 pending patent applications may be turned down by the Indian patent office for infringing upon Indian traditional knowledge
- Patent controller general sets up a committee to review patents granted since 2005 to weed out grants overlooking traditional knowledge
- Step prompted by approval of a patent to Avesthagen by Indian patent office, which India stopped European Patent Office from granting



FROM THE FRONT PAGE

India seeks...

Avesthagen had made a similar application for a patent in 2007 to the EPO patent office, which fell through after the TKDL office, an arm of the Council of Scientific and Industrial Research (CSIR), raised an objection in an independent intervention, and the EPO gave an adverse search report indicating that the patent indeed infringed upon India's traditional knowledge. What perplexes patent lawyers FE spoke to is why CSIR chose not to intervene in their home country in a similar manner.

"The fact that the Indian government went out of its way to prevent a patent in Europe while remaining largely lackadaisical about a similar patent in India is very worrying, to say the least. The government must immediately train examiners to use the TKDL database. And it must insist that examination reports reflect a thorough search of the TKDL database," said Shamnad Basheer, an intellectual property expert.

However, what is becoming clear is that patent offices' lack of access to TKDL may not have caused the ongoing oversight. Prasad, who took over as patent controller general five months ago, indicated to FE that patent offices had access to the TKDL database. "I understand we had an agreement with CSIR enabling access to TKDL database. This was to expire in Ju-

ly 2012 and we would be renewing it for next six years," Prasad said.

A patent lawyer, on the condition of anonymity, said: "We should put our own house in order before pointing fingers at others. The truth is that the facility of pre-grant objection to a patent that the Indian law provides for is a much more powerful weapon in the hands of independent people who want to raise objection to a patent grant, compared to the third-party intervention that EPO allows. What escapes reason is why CSIR did not oppose the (Avesthagen's) application at a pre-grant stage."

FE, however, found that the action of the patent controller general of reviewing patent awards was prompted by a show-cause notice sent by the department of industrial policy and Promotion (DIPP), the nodal department for patent policymaking. A DIPP official confirmed this. The DIPP alarm bell in turn was triggered by a letter of objection that was sent to it by CSIR pointing out the lapse, using the specific example of the Avesthagen case.