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REPORT: ATIP03.047: Patent Activities in India  
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Date: August 26, 2003  
ATIP03.047: Patent Activities in India

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# Patent Activities in India



*ATIP/India*

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**ABSTRACT:** Indian intellectual property laws are by and large in line with those in the developed world. One contentious issue has been on product patents in certain areas, but two legislations have brought the Indian patent system closer to what developing countries want them to be. By the year 2005, India is supposed to fulfill all its obligations to the World Trade Organization (WTO), but there may be a delay. This report provides an overview of the Indian patent system with descriptions of its background, current status, and likely developments.

**KEYWORDS:** Biotechnology, Chemistry, Computer Software, Government Policy on Science and Technology

**COUNTRY:** India

**DATE:** August 26, 2003

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## 1. INTRODUCTION

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Intellectual Property Rights (IPR) in India is one of the most misunderstood topics both within the country and abroad. India provides strong IPR protection in almost all areas, but is often perceived overseas as a country with a weak IPR regime. The reason for this impression is the lack of product patent protection in three areas: pharmaceuticals, chemicals, and agricultural chemicals. The Indian parliament had passed a new Patent Act in 1970. This Patent Act removed the product patent protection provided until then in those three areas. Indira Gandhi, the Indian Prime Minister in the 1970s, believed that India, as a developing country, could not afford to provide product patent protection in pharmaceuticals, chemicals and agricultural chemicals. This was largely due to the popular belief by the people in India that product patent protection would increase the prices of drugs and agricultural chemicals. Both are politically sensitive sectors.

Opposition to changing the Patent Act continued in India long after the country signed the General Agreement on Tariffs and Trade (GATT) in 1994; when all the issues were seemingly settled. India had amended the 1970 Patent Act twice to fulfill its obligations to the World Trade Organization (WTO). However, the Act needs one more amendment before January 1, 2005 for India to fully satisfy all its WTO obligations.

There are a few additional reasons for people to believe that the Indian IPR regime is weak. The amendment legislations were considerably delayed, leading overseas pharmaceutical companies to suspect they would never be enacted. A visit to some patent offices in India would shake up even the most ardent believer in the Indian patent system because the facilities there would be considerably outdated.

Implementation of the law is not easy in India, particularly in areas such as computer software, where illegal copying is rampant. These problems are really legacies of cultural differences with the West. Although patents have been granted in India as far back as 1856, the vast majority of people in the country believe patents to be unnecessary and unjust documents. It is not easy for politicians to legislate against such strong sentiments. To make matters worse, lobbying and Non-governmental Organizations (NGOs) exploit the widespread patent illiteracy and spread myths about patents. Some of these NGOs are actually funded by developed countries.

However, things have improved considerably in the last decade, primarily because top bureaucrats and politicians understand the need for the Indian patent system to be consistent with that of the developed world. The increasing investments Indian companies are making in R&D are also catalysts for change. The Indian administrative and political systems usually adapt to changes in the rest of the world, but there is always a time lag. Since there are few controversial topics on copyrights and trademarks, this report does not consider them. Instead, the report summarizes and analyses the complex issues surrounding patents in India and also provides a short summary of patenting activities in India.

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