

The Second Annual National Workshop ***“Rethinking Intellectual Property 2012 - ‘Indian Patent Law: The Social Overtones’***: A brief Report.

The Inter University Centre for Intellectual Property Rights Studies (IUCIPRS), CUSAT, in association with MHRD Chair on IPR, CUSAT, has conducted the Second Annual National Workshop on *Rethinking Intellectual Property 2012* for the Law Students from 12th to 14th January, 2012. The theme of 2012 was *‘Indian Patent Law: The Social Overtones’*.

The workshop was formally inaugurated by Dr. Ramachandran Thekkedath, Vice Chancellor, CUSAT. Dr. N. S. Gopalakrishnan, Director, IUCIPRS, in his welcome address, explained that the aim of the national annual workshop series is to prompt the young law students to rethink critically on different IPR issues taking into account the social dimensions involved. In the inaugural speech, Dr. Ramachandran Thekkedath, Vice Chancellor of CUSAT expressed his disappointment in the Indian Patent system owing to the inefficiencies in promoting domestic entrepreneurship. The event was felicitated by Dr. Godfrey Louis, Pro Vice Chancellor, CUSAT. He emphasised that it is the need of the hour to restructure the present patent law, understanding and rethinking about the underlying public interest concerns. Ms. Rujitha T.R., Research fellow IUCIPRS delivered vote of thanks. The inauguration of the workshop was followed by cultural programmes performed by the students of School of Legal Studies, CUSAT.

Fifty students from seventeen Law Schools all over India have participated in this Workshop. The five technical sessions of the workshop are managed by eminent resource persons including Prof. (Dr.) N.S. Gopalakrishnan, Director, IUCIPRS, Prof. Shamnad Basheer, Professor, HRD Chair on IPR, NUJS, Kolkatta, Mr. Lawrence Liang, Alternate Law Forum, Bangalore, Ms. Marie D. Mesidor, Brazil etc. The workshop was also enriched with invited talks by Prof. (Dr.) Biswas S.K., Professor (Emeritus), Dept. of Mechanical Engineering, Indian Institute of Science, Bangalore and Mr. Zakir Thomas, Project Director, Open Source Drug Discovery (OSDD), CSIR. The workshop comprised of five technical sessions, with sub themes, “Preserving Public Domain: Role of patentability standards”, “Promotion of Innovation: Limitations of exceptions to patent rights”, “Public Health: Limitations of Compulsory Licensing & Parallel Importing”, “Traditional Knowledge: New Challenges to Patent Law” and “Rethinking Patent Rights: Should it be Individual Private Property or Collective Property?”.

The technical sessions were between 8 am to 12 pm and 4 pm to 8 pm. Each technical session started with students’ presentations and the concepts behind each sub-theme were further explicated using exercises comprising of debates, role plays, mock moot, parliamentary debates etc. In between two technical sessions there were invited talks.

A brief summary of the Second Annual National workshop:

The 1st technical session was on “Preserving Public Domain: Role of patentability standards. Prof. N.S. Gopalakrishnan, Director, IUCIPRS, and Mr. Lawrence Liang, Alternate Law

Forum, Bangalore were the Resource Persons. There were two Power Point presentations on this subtheme. Ms. Asha Soman, LL.M., School of legal studies, CUSAT made a presentation on “Preserving Public Domain: Role of patentability standards”, and Ms. Deepika S & Ms. Vincy Mary Vavachan, School of Legal Studies, CUSAT made a presentation on -“Protecting Innovation: The Role of Public Domain”. It was followed by students exercise – A debate based on the Novartis case and a Role play prepared by Ms. Rujitha T.R. Research fellow, IUCIPRS, CUSAT.

A brief summary of the session is as follows:

If public domain materials mean materials that are freely available and having free access to all, public domain is a tool for further innovations. This dialectic relationship between the public domain and promoting innovation makes it imperative to protect, preserve and enrich public domain. The interpretation of the standards of patentability and the term “person skilled in the art” gains prominence in the context of new technologies. Thus the requirements of patentability such as novelty, inventive step & utility and their application in determining the exact scope of the “invention” becomes crucial in preserving public domain. The role of s.3 (d) of the Indian patent Act facilitates the protection of public domain in the case of pharmaceutical inventions. But one has to seriously ask whether patent protection is enough to promote innovations, or exceptions to patent rights have any role to play.

The session was followed by invited talk on “Protecting innovation: The social realities” by Prof. (Dr.) Biswas S.K., Professor (Emeritus), Dept. of Mechanical Engineering, Indian Institute of Science, Bangalore who enriched the session by revealing how the Indian markets become the dumping yards of the products of Multinational corporations especially in the case of medical devices, and the consequences of our blatant imitation of western model of innovation structure. Should social motivation replace this western oriented approach?

The 2nd technical session was on “Promotion of Innovation: Limitations of exceptions to patent rights”. Dr. T.G. Agitha, Research Officer, MHRD Chair on IPR, CUSAT, Mrs. Saleena K.B., Assistant Professor, Christ University, Bangalore & Mr. Yogesh Anand Pai, Assistant Professor, NLU, Jodhpur were the resource persons. There were two Power Point presentations on this subtheme. Ms. Priyamvada P. & Ms. Priyanka Prakash, School of Legal Studies, CUSAT made a presentation on “Sealing the Coffin on Experimental Use: An Overview” and Mr. Anubhav Shukla, & Mr. Manish Kumar Das, School of Law, Christ University, Bangalore made a presentation on “Bolar Exception: Promoting Innovations”. This was followed by a mock moot prepared by Ms Saleena. Professor N.S. Gopalakrishnan and Mr. Lawrence Liang joined the discussions.

A brief summary of the session is as follows:

Patent rights are not enough to promote innovations and to enrich public domain. The role played by exceptions to patent rights in the promotion of innovation is immense in a market economy. Exceptions to patent rights form a part of public domain demarcating the patent keeping spaces of public domain.

But one has to seriously ask whether every research should be limited only to satisfy curiosity of the inventor, since the result or the end product of every research and experiment is ultimately commercialisation of the products or process of such activities. So, putting limits to research and experimental use exceptions render the patent exceptions useless. The extent of exceptions to patent rights depends on the social, economic and political structure of each country. Each country is free to use the flexibilities provided under the TRIPS according to their needs. The research and experimental use exceptions under the Indian Patent Law are, thus, means to enrich and use the public domain materials.

The 3rd technical session was on “Public Health: Limitations of Compulsory Licensing and Parallel Importing”. Prof. Shamnad Basheer, Professor, HRD Chair on IPR, NUJS, Kolkatta, Ms. Marie D. Mesidor, Brazil and Dr. T.G. Agitha, Research Officer, MHRD Chair on IPR, CUSAT, were the resource persons. There were two Power Point presentations on this subtheme. Ms. Lekha Vijayan, NUALS, Cochin made a presentation on “Public Health: Limitations of Compulsory Licensing and Parallel Importing”, and Ms. Rhea Roy and Ms. Parvathy K, School of Legal Studies, CUSAT made a presentation on “Compulsory Licensing and Parallel Importing : An Industrial perspective”. This was followed by a Debate prepared by Dr. T.G Agitha. Professor N.S. Gopalakrishnan, Mr. Lawrence Liang and Mr. Yogesh Anand Pai joined the discussions.

A brief summary of the session is as follows:

Compulsory licensing and parallel importing provisions are instruments for market intervention and facilitate access to patented products or processes at an affordable cost. The measures provided under the Indian Patent Act prevent abuse of patent monopoly, especially in the field of public health. The wording of the general grounds for compulsory licenses is not amenable to easy interpretation and is not operationally useful. The time consuming administrative intricacies spoils the effectiveness of these provisions. Thus compulsory license becomes ineffective and fails to promote competition. In the context of mergers and acquisitions in the field of generic pharmaceutical companies manoeuvred by the foreign multinational pharmaceutical companies, one has to seriously think about the effectiveness of compulsory licensing in the future.

The second invited talk was on “Open source drug discovery: The challenges” by Mr. Zakir Thomas, Project Director, Open Source Drug Discovery (OSDD), CSIR. The discussion helped to explore an alternative new incentive structure for drug discovery in neglected market areas. It also made us to realize the concerns and challenges faced by such alternative model while trying to coexist with the patent system.

The 4th technical session was on Traditional Knowledge: New Challenges to Patent Law. Prof. N.S. Gopalakrishnan, Director, IUCIPRS, Mr. Lawrence Liang, Alternate Law Forum, Bangalore & Prabha S. Nair, Research Officer, MHRD Chair on IPR, CUSAT, were the resource persons. There were two Power Point presentations on this subtheme. Ms. Mahima Rathi, NLU, Jodhpur made a presentation on “TKDL: A Protective Guard or Key to Misappropriate Indian Traditional Knowledge”, and Ms. Lekshmi, School of Legal Studies,

CUSAT made a presentation on “Traditional Knowledge and Patent Issues in TRIPS Regime”. This was followed by debate & role play prepared by Prabha S. Nair. Professor Shammad Basheer and Mr. Yogesh Anand Pai joined the discussions.

A brief summary of the session is as follows:

Even though traditional knowledge is excluded from patentable subject matter, there were concerns on the use of the information from Traditional Knowledge holders. Irrespective of the nature of TK, whether it is individually generated and collectively used or vice versa, there are difficulties in tracing the communities holding the TK. The difficulties in examining patent applications relating to TK related inventions are posing challenges to the patent system. The standards created by the existing formal IPR regime is inefficient to recognise the evolving traditional knowledge system nurtured and nourished through the contributions of generations and thereby the credibility of the patent system itself is getting questioned through the grant of patents that do not involve the sufficient novelty and inventive step. The digitalisation of the traditional knowledge, ie., Traditional Knowledge Digital Library has not taken any measures to ensure that the released information does not become a subject for further misappropriation. The absence of definition of traditional knowledge and the kind of interpretations likely to be given to TK also are serious challenges.

The 5th technical session was on Rethinking Patent Rights: Should it be Individual Private Property or Collective Property? Prof. N.S. Gopalakrishnan, Director, IUCIPRS, Prof. Shammad Basheer, Professor, HRD Chair on IPR, NUJS, Kolkatta, Mr. Lawrence Liang, Alternate Law Forum and Mr. Yogesh Anand Pai, Assistant Professor, NLU, Jodhpur, were the resource persons. There were two Power Point presentations on this subtheme. Ms. Pradnya & Ms. Namrata Chatterjee, NLU, Jodhpur made a presentation on “A Critique of the Current Patent System and Alternative Incentive Structures”, and Ms. Aruna A. & Ms. Rohini S.Kumar, School of Legal Studies, CUSAT made a presentation on “Collective Ownership Policy of Biotechnological Inventions - Towards Optimum Balance Between Public and Private Ownership”. This was followed by parliamentary debate prepared by Mr. Yogesh Anand Pai.

A brief summary of the session is as follows:

The current patent system failed to attain its goal of being incentive to the inventor as well as to the society, as substantial number of patents granted are not commercially viable. In addition to that, dilution of patentability standards and patent protection for incremental innovations has resulted in inadvertent infringement, tragedy of anti commons and patent trolls. So it is time to rethink about an alternative incentive structure which is socially and economically advantageous, both to society as well as to the inventor. One of the alternate models is independent innovation where complete and exclusive property rights are granted on self invention. Another alternative is invention return system – market determined reward. Where invention is worked and return is determined according to market based auction, the

government will determine the amount of return to the inventor and investor to work the invention. Thus, modifying the private nature of monopoly rights to liability norms based on market value are socially and economically viable alternatives mitigating the drawbacks of current patent system. This alternative incentive structure ensures certainty of rewards, commercial viability of invention thereby encouraging competition.

Thus the second annual workshop unveiled the fundamental premises of social responsibility of the patent system and dwelled upon the issue how far the existing patent law responds to the public interest at large.

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