

Patents (Amendment) Act, 1999

Section 3 - Insertion of New Chapter Iva

After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:

'CHAPTER IVA'

Exclusive Marketing Rights

24A. Application for grant of exclusive rights - (1) Notwithstanding anything contained in sub-section (1) of section 12, the Controller shall not, under that sub-section, refer an application in respect of a claim for a patent covered under sub-section (2) of section 5 to an examiner for making a report till the 31st day of December, 2004 and shall, where an application for grant of exclusive right to sell or distribute the article or substance in India has been made in the prescribed form and manner and on payment of prescribed fee, refer the application for patent, to an examiner for making a report to him as to whether the invention is not an invention within the meaning of this Act in terms of section 3 or the invention is an invention for which no patent can be granted in terms of section 4.

(2) Where the Controller, on receipt of a report under sub-section (1) and after such other investigation as he may deem necessary, is satisfied that the invention is not an invention within the meaning of this Act in terms of section 3 or the invention is an invention for which no patent can be granted in terms of section 4, he shall reject the application for exclusive right to sell or distribute the article or substance.

(3) In a case where an application for exclusive right to sell or distribute an article or a substance is not rejected by the Controller on receipt of a report under sub-section (1) and after such other investigation, if any, made by him, he may proceed to grant exclusive right to sell or distribute the article or substance in the manner provided in section 24B.

Explanation - It is hereby clarified that for the purposes of this section, the exclusive right to sell or distribute any article or substance under this section shall not include an article or substance based on the system of Indian medicine as defined in clause (e) of sub-section (1) of section 2 of the Indian Medicine Central Council Act, 1970 and where such article or substance is already in the public domain.

24B. Grant of exclusive rights-(1)Where a claim for patent covered under sub-section (2) of section 5 has been made and the applicant has, -

(a) where an invention has been made whether in India or in a country other than India and before filing such a claim, filed an application for the same invention claiming identical article or substance in a convention country on or after the 1st day of January, 1995 and the patent and the approval to sell or distribute the article or substance on the basis of appropriate tests conducted on

or after the 1st day of January, 1995, in that country has been granted on or after the date of making a claim for patent covered under sub-section (2) of section 5; or

(b) where an invention has been made in India and before filing such a claim, made a claim for patent on or after the 1st day of January, 1995 for method or process of manufacture for that invention relating to identical article or substance and has been granted in India the patent therefore on or after the date of making a claim for patent covered under sub-section (2) of section 5 and has received the approval to sell or distribute the article or substance from the authority specified in this behalf by the Central Government, then, he shall have the exclusive right by himself, his agents or licensees to sell or distribute in India the article or the substance on and from the date of approval granted by the Controller in this behalf till a period of five years or till the date of grant of patent or the date of rejection of application for the grant of patent, whichever is earlier.

(2) Where, the specifications of an invention relating to an article or a substance covered under sub-section (2) of section 5 have been recorded in a document or the invention has been tried or used, or, the article or the substance has been sold, by a person, before a claim for a patent of that invention is made in India or in a convention country, then, the sale or distribution of the article or substance by such person, after the claim referred to above is made, shall not be deemed to be an infringement of exclusive right to sell or distribute under sub-section (1):

Provided that nothing in this sub-section shall apply in a case where a person makes or uses an article or a substance with a view to sell or distribute the same, the details of invention relating thereto were given by a person who was holding an exclusive right to sell or distribute the article or substance.

24C. Compulsory Licences - The provisions in relation to compulsory licences in Chapter XVI shall, subject to the necessary modifications, apply in relation to an exclusive right to sell or distribute under section 24B as they apply to, and in relation to, a right under a patent to sell or distribute and for that purpose the following modifications shall be deemed to have been made to the provisions of that Chapter and all their grammatical variations and cognate expressions shall be construed accordingly, namely:-

(a) Throughout Chapter XVI, -

(i) working of the invention shall be deemed to be selling or distributing of the article or substance;

(ii) references to "patents" shall be deemed to be references to "right to sell or distribute",

(iii) references to "patented article" shall be deemed to be references to "an article for which exclusive right to sell or distribute has been granted":

(b) three years from the date of sealing of a patent in section 84 shall be deemed to be two years from the date of approval by the Controller for exclusive right to sell or distribute under section 24B:

(c) the time which has elapsed since the sealing of a patent under section 85 shall be deemed to be the time which has elapsed since the approval by the Controller for exclusive right to sell or distribute

under section 24B;

(d) clauses (d) and (e) of section 90 shall be omitted.

24D. Special Provision for Selling or Distribution - (1) Without prejudice to the provisions of any other law for the time being in force, where, at any time after an exclusive right to sell or distribute any article or substance has been granted under sub-section (1) of section 24B, the Central Government is satisfied that it is necessary or expedient in public interest to sell or distribute the article or substance by a person other than a person to whom exclusive right has been granted under sub-section (1) of section 24B, it may, by itself or through any person authorised in writing by it in this behalf, sell or distribute the article or substance.

(2) The Central Government may by notification in the Official Gazette and at any time after an exclusive right to sell or distribute an article or a substance has been granted, direct, in the public interest and for reasons to be stated, that the said article or substance shall be sold at a price determined by an authority specified by it in this behalf.

24E. Suits relating to infringements - All suits relating to infringement of a right under section 24B shall be dealt with in the same manner as they were suits concerning infringement of patents under Chapter XVIII.

24F. Central Government and its Officers not to be liable - The examination and investigations required under this Chapter shall not be deemed in any way to warrant the validity of any grant of exclusive right to sell or distribute, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon'.