

BIOPATENTS -An Epitome of Human Development

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Abstract

The field of Intellectual property rights has received plethora of attention in the current scenario. The still born field is busy in captivating each aspect pertaining to human affairs. A recent field in this direction is the “Biopatents” that enumerates from the combination of two words “Bio” meaning life and “Patents” that encompasses the legal protection to inventive human minds for their work. This article gives a brief glance to the meaning of Biopatents and their acceptability in present scenario.

Biopatents-An epitome of Human Development

Introduction to Intellectual Property Rights

Intellectual property rights are the legal rights that are negative in nature as they provide exclusive time constrained rights to the human endeavors arising out of human intellect, human productive mind and its continuous brainstorming. The Intellectual Property rights provide for the protection of patents involving inventions capable of industrial application, are novel in nature (not in public domain) and involve inventive step. Inventive step as per section 2(j) (a) of the Indian Patent Act, 2005 means a feature of invention that involves a technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to the person skilled in that art.

Section 2(1) of Indian Patent Act, 2005 defines invention as “any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in

the world before the date of filing of filing the patent application with complete specification i.e. the subject matter has not fallen in public domain or that has not formed part of the same art”.

Recent Trends in Intellectual property regime

The ever-widening stream of intellectual property is very receptive to the changing trends, developments and scenarios and has included various other streams that are required to be protected to prevent unauthorized duplication of work, grant of wrong patents and protection of great human labor and money. The rights have included industrial designs, protection of new plant varieties, human genome, microorganisms, layout of integrated circuits, trade secrets, geographical indications, pharmaceutical products etc. The biotechnology is an emergent field that offers a complete different branch of patents that is biopatents. Biotech inventions suffer from a great public scrutiny as they are more prone to violate bioethics and various moral issues, as they are considered as mere discoveries rather than inventions. Another challenge that is faced by human genetic material is the proprietary rights claimed over it as it is a part of heritage of humanity as held Article 1 of UNESCO's Universal declaration of human genome and human rights 1997 “the human genome underlines in the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity”. In symbolic sense, it is heritage of humanity. But human genome has come out with miraculous therapeutic and diagnostic effects giving rise to the development of patents over human genetic material. Diversified claims are raised by academicians that the human genetic material collected by them in their research studies form their academic property, human genetic material collected by the medical treatment purpose where individual patients and researchers claim for rights in the blood or genome.

Biopatent- Introduction

Bio Patent, a subset of Biotechnology Patent is a patent on an invention in the field of biology that by law allows the patent holder to exclude others from making, selling or importing, using the protected invention for a period. It includes biotechnology, genetically modified microorganisms and genetic material. The applicability of patents to substances and processes wholly or partially natural in origin is a subject of debate. Patents of living organisms, that

include plant and animals and related biotechnology- enabled or biological inventions are classified as patents on life forms or biopatents.¹

Patenting of life forms must have at least two dimensions. Firstly, there is an ethical concept of the private ownership extent that could be extended to life forms. The Second dimension relates to the use of IPR concept as understood in the industrialized world and its appropriateness in the face of the larger dimension of rights on knowledge, their ownership, use, transfer and dissemination.

Great hue and cry is raised and it the government of developing countries consider them to violate their cultural heritage, free transfer and dissemination of technology and they find themselves in the strong clutches of international IPR regulations. But such minute differences may be resolved by international meetings on Biopatents involving the representatives of such countries for peaceful settlements and negotiations. Life patents are coupled with public interests with a balance of well-defined coordinated laws and effective set of new policies. Present jurisprudence surrounding Biopatents is more the result of patent friendly judiciaries and administrative exercise of discretion that favors extending patents to life and its genetic building blocks, than of legislative action steaming from robust public debate.²The genome database and bioinformatics require a significant statutory protection as the data is not only to be protected for present generation but also for sustainable development of the future generations. But it is argued that statutory proprietary protection provided to the biotechnology may hamper free innovations and research, but solution may lie in the open source patents serving both public interest and innovator interest. The Biopatent by incentivizing the patent holder rewards him of his immense labor, time and money that he has invested in obtaining the fruits of his strenuous efforts. Today's world is materialistic in nature and benefit to humans or to the society cannot be obtained by providing strong patent protection to biological inventions.

Conclusion

¹Sharples Andrew (2011-03-23) "Gene Patents in Europe Relatively Stable despite of uncertainty in Europe".

²State agency and patenting of life in International law by Bitu Amani

Biopatents has thereby received an international recognition by welcoming its acceptability in various legal statues all over the world. TRIPS has played an important pivotal role in this aspect as it provides a set guideline to be followed by developed and developing countries to incorporate Biopatents in their own laws as per the flexibility with domestic laws. Now it is up to the world acknowledged acceptance by both developing and developed countries to benefit the mankind in the fullest manner without hampering the interest of the inventor.

