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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 26th March, 1999/Chaitra 5, 1921 (Saka)

The following Act of Parliament received the assent of the President on the 26th March, 1999, and is hereby published for general information:—

THE PATENTS (AMENDMENT) ACT, 1999

(No. 17 OF 1999)

[*26th March*, 1999.]

An Act further to amend the Patents Act, 1970.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Patents (Amendment) Act, 1999.

(*2*) It shall be deemed to have come into force on the 1st day of January, 1995.

39 of 1970.

Amendment of section 5.

2. Section 5 of the Patents Act, 1970 (hereinafter referred to as the principal Act) shall be renumbered as sub-section (*1*) thereof and after sub-section (*1*) as so renumbered, the following sub-section shall be inserted, namely:—

"(*2*) Notwithstanding anything contained in sub-section (*1*), a claim for patent of an invention for a substance itself intended for use, or capable of being used, as medicine or drug, except the medicine or drug specified under sub-clause (*v*) of clause (*t*) of sub-section (*1*) of section 2, may be made and shall be dealt, without prejudice to the other provisions of this Act, in the manner provided in Chapter IVA.".

Insertion of new Chapter IVA.

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

'CHAPTER IVA

EXCLUSIVE MARKETING RIGHTS

Application for grant of exclusive rights.

24A. (*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. 48 of 1970.

Grant of exclusive rights.

24B. (*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 therefor 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 relatable 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 relatable thereto were given by a person who was holding an exclusive right to sell or distribute the article or substance.

Compulsory licences.

24C. 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.

Special provision for selling or distribution.

24D. (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.

Suits relating to infringements.

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

Central Government and its officers not to be liable.

24F. 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.'.

Omission of section 39.

4. Section 39 of the principal Act shall be omitted.

Amendment of section 40.

5. In section 40 of the principal Act, the words and figures "or makes or causes to be made an application for the grant of a patent outside India in contravention of section 39" shall be omitted.

Amendment of section 64.

6. In section 64 of the principal Act, in sub-section *(1)*, in clause *(n)*, the words and figures "or made or caused to be made an application for the grant of a patent outside India in contravention of section 39" shall be omitted.

Amendment of section 118.

7. In section 118 of the principal Act, the words and figures "or makes or causes to be made an application for the grant of a patent in contravention of section 39" shall be omitted.

Insertion of new section 157A.

8. After section 157 of the principal Act, the following section shall be inserted, namely:—

Protection of security of India.

'157A. Notwithstanding anything contained in this Act, the Central Government shall —

(*a*) not disclose any information relating to any patentable invention or any application relating to the grant of a patent under this Act, which it considers prejudicial to the interest of security of India;

(*b*) take action including the revocation of any patent which it considers necessary in the interest of security of India:

Provided that the Central Government shall, before taking any action under this clause, issue a notification in the Official Gazette declaring its intention to take such action.

Explanation.— For the purposes of this section, the expression "security of India" means any action necessary for the security of India which—

(*i*) relates to fissionable materials or the materials from which they are derived; or

(*ii*) relates to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(*iii*) is taken in time of war or other emergency in matter of international relations.'

Repeal and savings.

9. (*1*) The Patents (Amendment) Ordinance 1999, is hereby repealed. Ord. 3 of 1999.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Patents (Amendment) Ordinance, 1994, which ceased to operate, or under the Patents (Amendment) Ordinance, 1999, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act. Ord. 13 of 1994. Ord. 3 of 1999.

(*3*) All applications made in respect of claims for patent of invention specified under sub-section *(2)* of section 5 of the principal Act, from the date of cesser of the Patents (Amendment) Ordinance, 1994 till the date on which this Act receives the assent of the President (both days inclusive) shall be deemed to have been validly made as if the provisions of the principal Act, as amended by this Act, had been in force at all material times.

Ord. 13 of 1994.

RAGHBIR SINGH,
Secy. to the Govt. of India.

IndiaCode

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