PRESS INFORMATION BUREAU
पत्र सूचना कार्यालय
GOVERNMENT OF INDIA
भारत सरकार

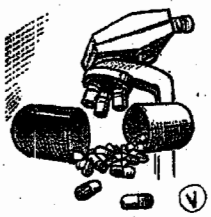
Economic Times , Delhi
Wednesday 12th March 2014, Page: 16
Width: 8.81 cms, Height: 19.78 cms, a4, Ref: pmin.2014-03-12.28.101

How to Strengthen India's Case on IPR

The basic law is sound, some practices are not

New Delhi is well within its rights to rebuff the US pharma lobby's attempt to label India a habitual intellectual property rights (IPR) offender. India's patent law is far from being weak on protecting IPR. Yet, it must sort out some things for its IPR regime to have credibility: the legal system must work fast and use of compulsory licensing (CL) must be seen to be restrained. It must use price control, rather than CL, to make drugs affordable. A complementary step would be an institutional arrangement for purchase commitments that will help pharma companies submit to price control with grace.

Pharma lobbies make much of a 2013 Supreme Court ruling that denied Novartis a patent for Glivec, a blood cancer drug. India's patent law, which changed in 2005 to let product patents on new inventions, is robust. Section 3(d) requires any incremental invention to show novelty and improved therapeutic efficacy to qualify for a patent, that is all. Novartis failed to provide evidence to show that its beta crystalline form had greater therapeutic value than its free base version, and so lost the case. The fault is with the drug company's claim, not India's patent law.



This logic should have come to the aid of MSD, in its dispute with Glenmark over a diabetes drug. Glenmark's defence is that the particular version of the chemical that it copied is not under patent. But the logic of Section 3(d) is that if one version of a molecule is under patent, the patent protection would extend to other forms as well. It is likely that the court would side with MSD in this case, but the judicial process is taking its time, entailing commercial losses for MSD. Similarly, the ground that was used for grant of a CL to domestic drugmaker Natco to make cheaper generic versions of a cancer drug was shaky. The interpretation that imports do not constitute the working of a patent is flawed. When an African nation issues a CL to an Indian company and imports drugs from India, it treats import as the working of a licensed patent. The way to make drugs affordable is price control, not CLs as the first resort.

Patent