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ABSTRACT

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Theme: Intellectual Property and Ethics

Subtheme: Patent and Ethics

Title of the paper: Patent Ever Greening: Law and Ethics

Today we are living in a 'knowledge economy' which is purely based on information which can be protected and en-cashed. The world is revolving round the potential know-how. The know-how is primarily protected by way of system of patents which is a kind of intellectual property (IP). IP deals with products of human ingenuity and creativity. It relates to knowledge and information which can be incorporated in tangible objects and can be commercially exploited. The expression, 'intellectual property rights' refers to legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. It is a collective term used to denote independent rights such as patents, trademarks, copyright, industrial designs, geographical indications, confidential information and layout designs.

The discussion in the present paper will be limited to patents with a special emphasis on ever-greening of patents. Patent is an exclusive privilege to reward the true and first inventors of new inventions. To be patentable, an invention must be novel, involving inventive step and of industrial application. Theoretically patents exist to promote the diffusion of innovative knowledge. The patent system provides necessary incentives for investment in research and encourages inventors to engage in new lines of R & D, thus it stimulating further creativity. It is considered as exclusive right and not as a monopoly, because in the scheme of patents there are inbuilt checks and balances to prevent the abuse of patents such as compulsory licensing, permitted use etc.

However, the recent trend in the patent system shows that there is a tendency to evergreen the patent rights, especially in the pharmaceutical sector, by making trivial modifications and changes. Drug companies generally do ever-greening, by filing new patent applications, tweaking existing molecules to show novelty. Ever-greening of patent is a phrase used to label practices that have developed in certain jurisdictions wherein a trifling change is made to an existing product, and claimed as a new invention. The coverage/protection afforded by the alleged new invention is then used to extend the

patentee's exclusive rights over the product, preventing competition. Directly or indirectly, it creates private monopolies resulting in patent abuse affecting the human rights of millions of patients in low income countries. Ever-greening of patents also facilitates giant multinational pharmaceutical companies to artificially extend the period of patent to keep competitors out and keep the prices of the patented product high. It gives rise to many legal ethical and human right issues including public health crisis. Against this backdrop, the paper will discuss the ethical and legal issues surrounding intellectual property rights with a special emphasis on ill effects of ever-greening of patents. The judicial decisions from U S and India including the landmark judgement *Novartis A G v. Union of India* will be analysed.

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