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# Emerging markets like Brazil, South Africa initiate reforms in patent laws in line with India's IP policy

Economic Times

New Delhi, 24 October 2013: Days before the Supreme Court ruled that Novartis' cancer drug Glivec is not a new invention good enough to be granted patent in April, a top executive of Pfizer had told a US Congress sub-committee, "India's action reverberates far beyond its borders."

That was perhaps the worst fear of Big Pharma, and it seems to be coming true with key emerging markets Brazil and South Africa initiating reforms in their patent laws in line with India's intellectual property policy. And global experts now expect other developing countries to follow suit.

"Both Brazil and South Africa have been greatly influenced by India's decision to incorporate TRIPS (Trade Related Intellectual Property Rights) flexibilities designed to prevent evergreening of patents and to increase access to affordable medicines," Brook Baker, professor at Northeastern University School of Law, Boston, told ET.

Most global experts ET spoke to feel that the globally debated Supreme Court judgment on Glivec became a critical trigger in reviving patent reforms debate across emerging economies.

"I think that the Indian legislation has influenced both the South Africa draft IP policy and the Brazilian proposed reform of the patent law," Carlos Correa, eminent IP expert and a professor at the University of Buenos Aires, said.

Brazil earlier this month tabled in its Parliament proposed changes in its patent policy that "clarifies matters that are not considered to be inventions: such as new use patents and new forms of known substances — along the lines of the Indian Patent Act as revised in 2005". It also recommends "increase in the standard of inventive step in order to promote incremental innovation, along the lines of the Indian Patent Act".

South Africa, in a draft patent policy on which it has invited public comments, has recommended allowing opposition to a patent before and after it is awarded "to effectively foster spirit of granting stronger patents". The draft released last month says, "A country like India resorted to pre and post-grant opposition to facilitate a possibility of opposing weaker patents... This procedure has been a success to challenge 'weaker patents'."

Both Correa and Baker think Section 3(D) of Indian Patent Act, which bars award of patent to frivolous and obvious incremental innovations and was at the heart of the Supreme Court's Glivec judgment, has been a clear inspiration for Brazil.

"The Indian influence is perhaps most evident in case of Brazil in relation to the standard of patentability, since the proposed reform partially relies on the concepts incorporated in Section 3(D) of Indian Patents Act," Correa said.

Experts now feel many smaller economies in the Africa and Latin America will initiate similar patent reforms to protect public health interests at home.

“One can expect that with these two powerful technologically proficient developing countries making the move, other developing countries are likely to follow suit,” Shamnad Basheer, an IP expert, said.

According to Basheer, Big Pharma's anguish at India striking a different patent chord was not so much about the relatively minuscule Indian market and their expected losses from patent invalidations and compulsory licensing. It was more about the fear of other countries following suit and this fear is now playing out.

Baker said that by moving in the same direction, India, Brazil and South Africa — all BRICS members — are also demonstrating an IP leadership that is having positive precedential effect in other countries such as Uganda and Zambia among others.

The development comes when India's jurisprudence on patents is still evolving and the court's decision on many important patent battles such as the one between US multinational Merck Sharp & Dohme and domestic firm Glenmark on diabetes drug Januvia would shape the Indian patent landscape further.

Leena Menghaney of Medecins Sans Frontiers feels that the Supreme Court decision on Glivec provided an impetus for public health groups to accelerate this debate in Brazil and South Africa where public interest and treatment groups are running ‘fix the patent laws’ campaigns relentlessly to reduce abuse of the patent system by pharma companies. Not everyone agrees though.

MM Kleyn, fellow of the chair of intellectual property at the University of Stellenbosch in South Africa, said that apart from some arbitrary references in the draft that South Africa should follow the mould of “similar economies such as Brazil, India and Egypt” and few brief references, “there is no supporting empirical evidence or research that allows for any form of systematic and consequential analysis of the draft policy of South Africa”.

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