

## PATENT V/S MONOPOLY-A CASE STUDY

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### CASE STUDY

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#### ABSTRACT:

Provisions of Compulsory License balance this law between interest of Inventor & public as through these provisions License can be provided to others if the invention did not use sufficiently for Public.

In case of medicine this law remains in debate from its beginning as Drugs are essential & Life saving commodities & monopoly on drugs products can make them inaccessible to poor people.

Big Pharma players tries to extend monopoly on their patented products through subsequently filling frivolous Patents as report says that most of the Patents filed remain as minor modifications than any breakthrough invention. This practice doesn't provide more new Drugs molecules which can help in fighting new form of disease, through this practice Pharma companies only tries to increase their profits.

**Key words:** Patent, IPAB, Glivec.

#### Introduction

While providing short term monopoly to Pharma Companies through Patent Law it should be ensured that it doesn't create barrier to access essential & life saving Drugs.

As practiced from ancient time in various form Patent protection is provided to inventor as their right to enjoy on intangible asset.

Patent provide short term monopolistic rights to the inventor to recoup their expenses within defined time period protection (20 years).

As these rights provided by state on disclosure of Invention by the Inventor, main aim of this protection is to encourage Inventor & to reproduce Research for their creation of new & advance products.

Indian Patent Law 1970 provides protection of 20 years, where no one other than Inventor has right to manufacture, sell, import, offer to sale the product for which protection provides

Criteria of Novelty, Non obviousness & Industrial applicability define boundaries for

appropriate Invention; Section 3 further adds clarity to these criteria for obtaining breakthrough Invention nevertheless frivolous.

Provisions of Compulsory License balance this law between interest of Inventor & public as through these provisions License can be provided to others if the invention did not use sufficiently for Public.[1]

In case of medicine this law remains in debate from its beginning as Drugs are essential & Life saving commodities & monopoly on drugs products can make them inaccessible to poor people.

In India a person spends about 70% of their life time earning in Medical treatments & most of the Indian medical sector is in private hand. Big Pharma companies tries to extend monopoly on their patented products through subsequently filling frivolous Patents as report says that most of the Patents filed remain as minor modifications than any breakthrough invention. This practice doesn't provide more new Drugs molecules which can help in fighting new form of disease, through this practice

pharma companies only tries to increase their profits.

### Discussion

Indian Patent act was amended in 2005 in compliance with TRIPS provision,

Recent Novartis case of “Glivec”:- Imatinib mesylate is used to treat chronic myeloid leukemia and is marketed by Novartis as “Glivec” or “Gleevec”. This tells the complete story about malpractice to evergreen Patents prevails. Patent office Chennai rejected this Patent application, further IPAB also hold the decision of Patent office. Later SC in landmark judgment rejected the claim. In this case term efficacy was interpreted as therapeutic efficacy where minor modification in the molecule which increases solubility & better stability doesn't qualify for the criteria of Patentability. [2,3]

IPAB also considered that price was too high as compared to average rates of other companies as Pfizer.

Novartis is offering a tablet at cost of 4115 INR, & an annual treatment cost per patient is approximately 15 lakh INR, While Indian Generic companies offering the Tablet at cost of 30 INR & annual treatment per patient is 10,000 INR approx.

Various data shows that Trans National Drug corporations spends about US 1 billion dollar to come up with new Drug including R & D and cost on failed Drug also.

Take the case of Glivec sold in US, Novartis raked in a total turnover of US \$ 1.64 billion from US alone in 2012 from the Drug.

In an another case compulsory License was provided to Natco Pharma for Nexavar ( Sorofenib tosylate) an anticancer Drug, by IPAB on ground that Invention must available to public at reasonable & affordable price to public.

Bayer cost 2.8 lakh INR/ pack of 120 Tablets equivalent to month dosage, Natco was told to sell the pack at 8800 INR.

### Conclusion

However Indian Govt. has also raised the issue of difference in price of patented products on the

basis of per capita income in country but it may also cause the smuggling of these drugs

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