

Intellectual Property advocacy in the fields of:

- IP Infrastructure
- IP Policy
- Patent Law
- Copyright
- IP Valuation
- Technology Transfer
- Licensing
- Collaborations
- M & A
- Innovation Research
- Data Management
- Balance for Rights & Obligations

Exploring the Impact of Section 3 on Patent Applications in India

In recent times, there has been a significant rise in the number of challenges to the decisions made by the Controller of Patents. Previously, the Delhi High Court held the record for allowing the highest number of appeals and writ petitions against the Controller of Patents. However, the Chennai and Bombay High Courts have recently started issuing orders to send the cases back to the controller for a renewed assessment of the reasons for rejection and review of the case.

The majority of challenges were directed towards Section 3 (d) and the interpretation of known substances. However, recent rulings have expanded to include Section 3 (e), 3 (i), and 3 (k) as well as other sections. Below are some summaries of such cases:

1. Arthrogen v. Controller Gen of Patents: The DHC's Dilemma of Identifying the Method of Treatment under Section 3(i) of the Patent Act

Arthrogen GmbH submitted a patent application for a method of producing protein enriched blood serum using gold particles, comprising of steps (a) collecting a blood serum; (b) mixing the blood serum and gold particles in a container; (c) incubating the blood serum and gold particles to produce protein-enriched body fluid serum; and (d) removing the gold particles from the protein enriched blood serum. The application was rejected by the Controller of Patents.

During the first examination report, the objections were raised under Section 3(c), (d), (e), (f) and (j) of the Indian Patent Act. The applicant revised the claims to address these objections.

In the subsequent hearing, non-patentability objections were raised under the Section 3(b) and 3(i).

The application was rejected under Section 3(i) and 3(j).

The applicant appealed to the Delhi High Court for the denial of opportunity to revise the claims concerning Section 3(j) and contending that Section 3(i) was not applicable to the claimed invention.

Analysis

The objection for non-patentability under Section 3(j) was not included in the objections during the hearing notice. This denied the opportunity for the patent applicant to address the objections and revise the claims, which is a violation of natural justice.

The patent applicant had not made any claim with regard to Section 3(i). The claims were concerned with the process of creating a composition, and not a method of treatment as in Section 3(i). Though the resulting product could be used for transfusion, transfusion and other subsequent steps were not included in the claim.

2. The Chinese University of Hong Kong and SEQUENOM, INC. versus The Assistant Controller of Patents & Designs.

- The patent application was for a method of Fetal Genomic Analysis from a Maternal Biological Sample.

- The respondent at the Patent office in Chennai argued that this method was diagnostic as in Section 3(i), since the method helps in identifying genetic abnormalities in the fetus, thereby not patentable according to the Patent's Act. 1970.

- The applicant claimed that the method did not directly diagnose diseases, it solely identifies the fetal fraction in the maternal sample, which can be used for subsequent diagnostics procedures.

The Madras High Court (MHC) suggested refinement of Section 3(i). The court suggests restricting the use of the expression 'diagnostic' in Section 3(i) to in vivo processes and counter balancing by making provisions for compulsory licensing.

It's an indeed a great start of this year for all of us at GNANlex Associates LLP! Dr. Gopakumar G Nair, Founder of GNANlex Associates LLP, received an invitation to attend the World IP Forum (WIPF) 2024 from January 10 - January 13, 2024, from the dynamic and vibrant team of Mr. Jeet Agarwal and Mr. Navin Agarwal of WIPF. This invitation was extended after they had a meeting with our Founder, Dr. Gopakumar G Nair, during the National IP Conference 2023 at Vigyan Bhawan, New Delhi. Dr. Gopakumar G Nair was pleasantly surprised and felt honored when he was invited on floor to receive the prestigious "Influential and Inspiring Leader Of All Time" by WIPF 2024.

Thereafter, on 13th January 2024, Dr. Gopakumar G Nair co-ordinated a session on “Patent Infringement and Waivers - Is This An Evolvement Of New Strategy For Pharma?” where Dr.K.S. Kardam (Ex-Jt Controller General of Patents), Ms. Manika Arora (Associate Partner, Lall & Sethi), Ms. Mayuri Savani (Director, Alicon Pharmaceutical Pvt. Ltd.) and Ms. Neena Katrekar (Head of Intellectual Property, Genepharm) were speakers in the panel discussion. The session was well-attended and led to interesting discussion. The session was well-attended and led to interesting discussions on latest waivers to patents including J&J to Bedaquiline patents.

“WIPF-2024 was a dazzling extravaganza attended by luminaries from all over the world. The grand inauguration, gala dinners on every evening along

with excellent entertainment made the 4-day event not only memorable but also rich in its deliberations on IP, patents, copyrights, digital AI, etc.” - Dr. Gopakumar G Nair.



Knowledge is the Power,
Time to unlock the science
using
Intellectual Property as Key for
Realising Vision of Viksit Bharat

Empower Young Mind in shaping
Future of Bharat.....

Greetings on The National Science Day 🧪🔬

Prof. (Dr.) Unnat Pandit, CGPDTM



Piyush Goyal @PiyushGoyal · 11h

On the eve of #RepublicDay, a historic milestone! 🇮🇳

75,000 patents granted in FY 2023-24, averaging 250 patents EVERY DAY.

PM @NarendraModi ji's relentless pursuit to promote progress & innovation is truly empowering our journey towards becoming a Viksit Bharat.

