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Govt may modify IPR policy, say experts

See it giving importance to dollar inflows rather than pushing the case for diluted intellectual property rights regime

[Soumonty Kanungo @SoumontyK](#)



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Mumbai: The joint statement issued on September 30 by the US and India to establish an annual high-level Intellectual Property (IP) working group has inevitably led to a debate on whether the government would bow down to the US pressure.

A section of the pharmaceutical industry feels that the government may give importance to increasing the dollar in-flows through foreign direct investments (FDI) rather than pushing the case for a “diluted” intellectual property rights (IPR) regime that the country followed so far.

According to an industry expert, the government may choose to bow to the US pressure since it is keen on having more foreign companies investing in India. “May be it will, given that unless we comply with the requirements from MNCs, investment is not going to come. We are WTO-compliant but still there are some provisions under Section 3 (d) and compulsory licensing which are not in consonance with the global patent regime for the pharma sector. And the international lobby wants India to remove this,” said the expert.

Srividhya Ragavan, professor of law, University of Oklahoma College of Law, said in an emailed response, “Whether India will be cowed down by Pharmaceutical Research and Manufacturers of America (PhRMA) pressure is yet to be seen. But the recent events do show that there is pressure from PhRMA directly as well as indirectly to effectuate patent amendments. As a sovereign nation that is compliant with its trade obligations, India is not required to succumb to this pressure. Any ill-conceived amendment to the patent statute will affect either the government’s ability to facilitate access to medications, and/or result in low quality patents which in turn can affect the cost and access to those medications.”

Early last month, commerce and industry minister Nirmala Sitharaman had said the government will soon come up with a policy on IPR which will be open for public discussions.

Gopakumar Nair, IPR sub-committee chairman, Indian Drug Manufacturers’ Association (IDMA), said, “The discussions on IP are an ongoing process. But what Nirmala Sitharaman said that we will have an IPR policy is a wrong advice. If a task force has been formed to look into IPR policy, it does not mean anything and is a general statement with no binding on anybody. What has been actually done is a task force has been constituted to draft a National IPR policy and according to me, the draft is not at all practicable. If it has to be made practicable, it has to be implemented through acts and rule.”

Ragavan said, “India does have an interest in increasing the in-flow of FDIs. However, several non-pharmaceutical companies had expressed the view that they were satisfied with the state of the intellectual property laws in India even during the International Trade Commission (ITC) and the US Trade

Representative (USTR) hearings in 2013. Plus, the Indian patent statute is fully TRIPS compliant and has facilitated inventions in all areas, including in pharmaceuticals.”

Taking cue of Sitharaman’s view, Milind Antani, partner -- pharma and life science practice, Nishith Desai & Associates, said, “There has not been any further clarification after that statement that we have to make our IPR better. And if the government is considering any changes to the patent regime, it could be pertaining to the patentability exclusion provisions in the Indian Patent Act. Looking at the new government’s industry-friendly actions, focus on foreign investments and foreign companies, I expect patent regime to be at par with global regimes.”

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