

An Analysis of Possible Implications of Patent Term Extension in Pharmaceutical Sector on Indian Consumers

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Abstract : Patents are considered as good monopoly in India. It is a mechanism by which the inventor is encouraged to do invention and also to make available to the society at large with a new useful technology. Patent system does not provide any protection to the invention itself but to the claims (rights) which the patentee has identified in relation to his invention. Thus the patentee is granted monopoly to the extent of his recognition of his own rights in the form of utilities and all other utilities of invention are for the public. Thus we find both benefit to the inventor and the public at large that is the ultimate consumer. But developing any such technology is not free of cost. Inventors do a lot of investment in the coming out with a new technologies. One such example is of Pharmaceutical industries. These pharmaceutical Industries do lot of research and invest lot of money, time and labour in coming out with these invention. Once invention is done or process identified, in order to protect it, inventors approach Patent system to protect their rights in the form of claim over invention. The patent system takes its own time in giving recognition to the invention as patent. Even after the grant of patent the pharmaceutical companies need to comply with many other legal formalities to launch it as a drug (medicine) in market. Thus major portion in patent term is unproductive to patentee and whatever limited period the patentee gets would be not sufficient to recover the cost involved in invention and as a result price of patented product is raised very much, just to recover the cost of invent. This is ultimately a burden on consumer who is paying more only because the legislature has failed to provide for the delay and loss caused to patentee. This problem can be effectively remedied if Patent Term extension is done. Due to patent term extension, the inventor gets some more time in recovering the cost of invention. Thus the end product is much more cheaper compared to non patent term extension. The basic question here arises is that when the patent period granted to a patentee is only 20 years and out of which a major portion is spent in complying with necessary legal formalities before making the medicine available in market, does the company with the limited period of monopoly recover its investment made for doing research. Further the Indian patent Act has certain provisions making it mandatory on the part of patentee to make its patented invention at reasonable affordable price in India. In the light of above questions whether extending the term of patent would be a proper solution and a necessary requirement to protect the interest of patentee as well as the ultimate consumer. The basic objective of this paper would be to check the implications of Extending the Patent term on Indian Consumers. Whether it provides the benefits to the patentee, consumer or a hardship to the Generic industry and consumer.

Keywords : patent term extension, consumer interest, generic drug industry, pharmaceutical industries

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