

FAX TRANSMISSION

**Government of India
Ministry of Commerce & Industry
Department of Industrial Policy and Promotion**

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No.12/17/2012/IPR-VI	22 nd February, 2013

**Subject:- 19th Session of Standing Committee on Law of Patents in Geneva
from 25-28 February, 2013 – Recommendations from India to include
certain information in SCP Documents .**

Please find enclosed herewith recommendations from India for inclusion in SCP Documents. You are requested to take this into consideration while preparing the SCP documents.



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Recommendations from India for WIPO Secretariat to include certain information in the SCP Documents as referred to herein:

1. The following provisions of the Indian Patents Act may suitably be included in the document no. **SCP/18/2 Annex-II** :-

A. Sufficiency of disclosure

If the applicant mentions a biological material in the specification which may not be described in such a way as to satisfy clauses (a) and (b), and if such material is not available to the public, the application shall be completed by depositing the material to an international depository authority under the Budapest Treaty and by fulfilling the following conditions, namely:-

- a) The deposit of the material shall be made not later than the date of filing the patent application in India and a reference thereof shall be made in the specification within the prescribed period;
- b) All the available characteristics of the material required for it to be correctly identified or indicated are included in the specification including the name, address of the depository institution and the date and number of the deposit of the material at the institution.
- c) Disclose the source and geographical origin of the biological material in the specification, when used in an invention

B. Exclusion from patentable subject matter

Para. 4 in the text given in respect of India may be replaced by the following para.:-

“4 - The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

Explanation – For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers,

mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy;]

(C) Exceptions and limitations of the Rights,

The following provisions may also be included in the text given in r/o India:-

- (i) No suit or other proceedings for infringement can be prosecuted between the date of lapse of patent and the date of publication for restoration of patent.
 - (ii) Revocation of patent by the Central Government in public interest if a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public.
 - (iii) Revocation of patent by the Central Government in the interest of security of India.
2. The **paragraph 80** in document No.**SCP/18/4** may suitably be amended to include the following facts :-

The pre-grant opposition can be filed by any person without payment of any fee and there is no need to establish the locus standi of the person filing the pre-grant opposition.

3. The following statistical data may suitably be inserted in the **Annex I** of the document **No.SCP/18/4**:-

Statistics on opposition system

Year	Applications filed	No. of Published applications	Pre-grant oppositions	Post-grant opposition
2006-07	28940	19310	44	27
2007-08	35218	60506	64	34
2008-09	36812	40749	153	71
2009-10	34287	34305	103	28
2010-11	39400	33366	294	29