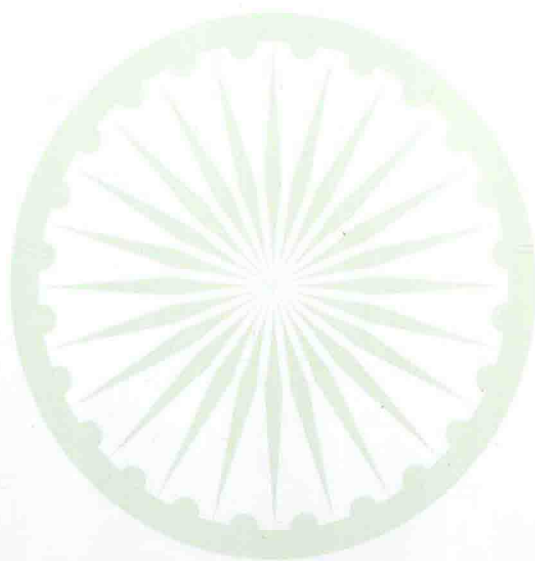


PATENT LAW IN INDIA

M.B. Rao & Manjula Guru



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Patent Law in India

Dedicated to the late MVJ Somayajulu and M Ellaramma

About the Author

Dr M.B. Rao is a senior consultant on Tax, Company and Arbitration matters. He received his master's degree in Law from the University of London and was a doctoral scholar at The Hague Academy of International Law. He began his career as an advocate at the Madras High Court in 1951 and appointed as a Solicitor to the Government of India, in 1961. In 1966, he became the Deputy Legal Advisor, Ministry of Law, and held various senior positions in that Ministry including Additional Secretary. During his career, Dr Rao has been Chairman of the Foreign Exchange Appellate Board, and Member-Secretary and then full-time Member of the Law Commission of India. He also worked as Tax Lawyer in the UNDP for two terms.

After retiring, Dr Rao has practiced law in the Supreme Court of India as a Senior Panel Counsel to the Government. He is a prolific writer and has published eight books prior to the present one.

Dr Manjula Guru is a consultant in the areas of law and economics and is enrolled as an Advocate of the Delhi High Court. She received her Masters Degree in Agricultural Law as well as an M.S. in Agricultural Economics and finally PhD on Public Policy from the University of Arkansas, Fayetteville, US. During this period, she was awarded the Agricultural Foundation Scholarship for Graduate Research (2001–2002) and the Economics and Marketing Panel Award for outstanding research (2002).

Dr Guru is a member of the American Association of Agricultural Economists and has published several papers in reputed journals in the areas of Agriculture, Law and Economics.

Preface

The debates in Indian parliament, leading to the enactment of Patent (Amendment) Act 2005 kindled in me the desire to express my own views on patent law in general and Indian patent law in particular. These debates leading to the adoption of the amendment bill saw the appointment of the (R.A.) Mashelkar Committee to go into some of the proposed amendments under discussion. The Committee is reported to have submitted its final report to the Government to expand the scope of patentability, by allowing patenting of new substances brought about by incremental innovations etc. While there is no definition of what constitutes 'incremental innovations', it may be said for the present that it depends on the facts and circumstances of a given case whether there is increased efficacy in the new substance to justify its patentability from a patented product.

It may be of interest to note that this grant of patent arising out of incremental innovation, though new to India, is increasingly seen in developed countries, largely arising out of growth in technology and improvements in techniques. Thanks to the efforts of the multinational companies (MNCs) whose imprint in India is also visible in all fields of public activity, the original concept of 'new manufacture' arising out of an 'invention' has largely given way to new substance having the presence of technical character, brought about by human endeavour. In view thereof, in this study, patenting of substances arising out of the advances in biotechnology and genetically engineered products, DNA sequences and computer related advances have been noticed at length.

Effort is also made to compare the provisions of patent law in India with those of the developed countries, such as US, UK and European Union and the evolution of present day patent law and how they served the original intent of public purpose.

In this effort, it is our honour and duty to acknowledge the immense help received from the learned writings of the authors and commentators referred to in the book. While it is difficult to mention all in the short space in the preface, special

mention may in this context be made of Lionel Bentley and Brad Sherman for their book on '*Intellectual Property Law*'; David Vaver with his compilation on '*Critical Concepts of Law*' of the '*Intellectual Property Rights*', which included several learned writings critically analysing the various aspects of patent law; and the learned authors in '*Intellectual Property and Information Wealth – Issues and Practices in the Digital Age (Patents and Trade Secrets)*', edited by Peter K. Yu (Prager Perspectives). All of them have helped me go deep into the various aspects of patent law.

I will fail in my duty if mention is not made to acknowledge the debt of gratitude from two other Indian authors on the subject, Mr P. Narayanan and Dr Elizabeth Verkey for their valuable books on Indian Patent Law.

Finally to my daughter, Dr Manjula Guru, my co-author who teaches at the University of Arkansas in the US, for bringing to my notice the various writings on the subject and for discussions on the subject during my stay in the USA; to my son, Dr Yajulu Medury for encouraging me to write and for the valuable help in bringing about the book; and lastly to my grand-daughter, Ms Renuka Medury for her constant appreciation and assistance in the matter.

Last but not the least to the various Heads of Departments and Editors of Kluwer Law International for their valuable suggestions and help in bringing out the book.

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