Innovation Patent: Effective Solution for Industrialization of Non-Industrialized Countries

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The intellectual property laws for protection of inventions, trademarks, industrial designs, utility models, copyright and trade secrets, if regulated and enforced appropriately, may bring about required economical and innovative incentives for national and foreign entrepreneurs to invest capital and efforts for development and acquisition of needed technology of developing countries.

Among the intellectual property rights, the patent laws for protection of new inventions are highly related to industrialization of developing countries. In the same vein, the importance of the *"working"* requirement in patent law stems from the fact that foreign technology is transferred when a patent is exploited either by the patent holder himself or when the patent is licensed accompanied with the needed technical know-how in the patent granting country. There is no doubt about the importance of the actual utilization of patents for the economic and industrial development of developing countries. Such an important role when viewed with the facts that patent laws prevent nationals from making, using, selling and even importing the patented article and competing with patentees made most countries to devise appropriate requirements. The situation is exacerbated by the fact that more than 70 per cent of granted patents in less industrialized countries are owned by foreigners, mostly multinationals, and almost 90 per cent of these foreign patents were not used effectively in these countries.

With regards to patents granted to proprietors of foreign technology, therefore, the primary concern for a developing country should be to ensure that these patents are worked in the country. It is the actual working of patents that, among other things, will help to build a strong technological base in the developing countries. The developing countries reasoned that, although patent systems may stimulate new inventions and innovations, but, in fact, the actual working of inventions makes the most positive impact on economic and industrial progress. The actual utilization of inventions also leads to innovations and new related inventions and the financial power of a successful utilisation enables more research and further development of the patented product.

They also must have adequate controls over foreign patents to be sure that those technologies which are important to her economic development are worked in the country as quickly as possible to the maximum extent feasible.

In short, intellectual property law in general and patent law in particular, should be viewed in developing countries as an instrument for economic and technological progress. The law must strike a proper balance between the monopoly rights to stimulate the creation of new technology and the dissemination of both new and old technological skills and knowledge.

According to UNCTAD reports, a number of developing countries have introduced changes in their patent system. Depending upon the degree of their development, the changes have generally tended to reinforce the provisions governing the actual working of patents and to prevent the use of intellectual property regimes as means to preserve import monopolies through introduction of stricter provisions for compulsory licences and revocation as remedies for non-use and through strong provisions against abuses in patent licensing agreements.

For example, section 83 of the Patent Act (1970) of India accentuates that: (a) patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practical without undue delay: and (b) they are not granted merely to enable patentees to enjoy a monopoly for the importation of patented article. These changes emphasised the working obligations of patentees, and they were recognized as significant steps towards adapting the patent system to the needs of economic development. It is interesting to note that, industrial countries themselves, at earlier stages of their own industrial growth had the same propositions. As a writer puts it, the United States of America during its first hundred years seems to have behaved as many developing countries do today:

> When the United States was still a relatively young and developing country..... it refused to respect international intellectual property rights on the grounds that it was freely entitled to foreign works to further its social and economic development.

However, the issue of actual working of patents still has been underestimated in many developing countries and this thesis shall shed more light on this important legal and industrial issue. It is submitted that development and acquisition of technology is crucial factor for narrowing the economical and developmental gap between developed and developing nations.

Unfortunately, the intellectual property rights, specifically the patent laws of most non-industrialized countries are either a legacy of their colonial masters or have been inspired by and modelled on the recommendations of the World Intellectual Property Organisation (WIPO) Patent Model Law for developing countries. The work of such international organisation is based mainly on patent concepts, laws and practices of the industrialized countries.

Although the intellectual property laws have served well the market economies of the developed countries, they have not necessarily benefited in all respects the non-industrialized countries which not only have dissimilar social, political and economic settings but are also several years behind the already industrialized countries in technological and industrial development.

At the level of international laws, Paris Convention for the Protection of Industrial Property of March 20, 1883 and the Trade related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization, the non-industrialized countries contain principles, norms and standards that applied by the industrialised countries but have not effectively worked for many non-industrialised countries and more importantly have not linked to the acquisition of technology and achievement of industrialisation as their goal. Understandably, while the transfer of required technology is one of the most important factors development and industrialization of all developing countries, the transfer of technology is no longer a matter of concern to the industrialised countries.

The Paris Convention of 1883[1] has failed to solve the problem of "non-working" of patents. On the whole, as will be considered in more detail in the thesis, the Convention has failed to strike a proper balance between the interests of patentees and those of the developing countries. During the evolution of patent law in the industrialised countries, developing countries were either colonised or semi-colonised

by industrialised countries. Some did not exist as states. However, developing countries despite the widening economic and industrial gap between them and the industrialised developed countries, gave a special position to industrial property rights in their law. Partly because of the ambiguous stance taken by the United Nations in terms of role of patents in the transfer of technology, developing countries believed that a patent system modelled on the systems in the industrialised countries will attract foreign technology and promote their own development.

Almost all developing countries have now enacted intellectual property laws and most of them have joined the international arrangements for protection of intellectual property, such as Paris Convention of 1883 and the WTO which has extended its jurisdiction to the protection of trade-related aspects of intellectual property rights (TRIPS). In this thesis the effects of Paris Convention and TRIPS on technology transfer to developing countries will be examined. It will be considered that developing countries will have authorization to enact national patent law to improve their technological capability.

Few developing countries have adapted their industrial property system to their own economic and technological needs. Furthermore, their patent laws are taken advantage of by the industrialised countries to impose a considerable number of restrictive business practices in technology licensing agreements under the umbrella of patent rights. At the same time, in most developing countries the privileges created by their patent laws have by and large failed to contribute either to stimulate inventions among their own nationals or to encourage rapid transfer, appropriate adaptation through assimilation and widespread diffusion of imported technologies.

The main question and thesis of this study is, for less industrialized countries where private entrepreneurs are supposed to have a wide role to play in the economic and industrial development and to increase productivity, how unconventional patents, called Innovation Patents are conceivable, suitable and working well for development and acquisition of required technology and know-how. Such Innovation Patent is granted in exchange for actual investments in working the new ideas rather than the ideas themselves. As we will examine in this study, indeed the developing countries should place more weight on innovation than invention.

It is submitted that in the process of technological change while invention is the almost easy part, innovation is much more difficult. Through the introduction of the innovation patent, local as well as foreign firms will be encouraged to use any information in the public domain to manufacture those new products which were not previously manufactured locally but are needed by the country. The valid consideration for the grant of an innovation patent will be the manufacture of the subject matter itself regardless of the origin of the inventive ideas which are applied in the manufacture.

Therefore, in the line and conformity with the standard patents under the Paris Convention and TRIPS, this proposal would involve the introduction of the system under which limited monopolies were granted in return for the introduction of new industries. In granting an innovation patent, the legal requirement of inventive step and universal novelty criteria for ordinary patents are replaced by the single criterion of local novelty alone. This can have a stimulating effect on both inventive activity and investments in the country.

In this scheme, the patent office is responsible for granting standard patents as well as innovation patents and, therefore, the establishment of a new office is not necessary. The innovation patent may be secured by commercial enterprises as well as individuals and research and development institutions and new processes are not granted innovation patents. This thesis, among others, will propose a draft law for protection of Innovation Patents of non-industrialized countries.

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