

# The precise beginning of the patent system history essay

[History](#)



The India's patent voyage from colonization to a globalization witnessed three distinct periods. To abridge, in the foremost or " colonial" time the British enacted India's first patent statutes in the concluding half of the 19th century. Even though India gained its sovereignty in 1947, it was not capable to enact its first autonomously drafted patent laws until the 1970s due to profound political and policy divisions over the significance and role of patent safeguard in the nation's developing economy. India's Patents Act, 1970 entered into force in the second or " post-independence" time. Though modeled on Great Britain's Patents Act, 1949, the Indian Act included key departures anticipated to diminish the social expenditure forced by mostly foreign-owned patents. The Patents Act, 1970 banned patents on products functional as medicines and food, reduced the time of chemical process patents, and notably extended the accessibility of compulsory licensing.[2]In the third or " globalization" phase from just about 1986 to the current, India's partaking in the debates over the addition of intellectual property within the GATT agenda and its eventual ingress into the World Trade Organization (WTO), all along with its taking over to the Paris Convention for the safeguard of Industrial Property and the Patent Cooperation Treaty,[3]have forced considerable amplification of the nation's patent laws. The accomplishment of those changes is continuing, and their predictable blow leftovers to be completely seen. India innate its patent laws from the British; no prior domestic acknowledgment of patents has been reported.[4]British authority in India can be traced back to Queen Elizabeth-I's chartering of the " Governor and Company of Merchants of London trading into the East Indies" in 1600.[5]The British coronet took over total control of India from the

East India Company in the repercussion of the Great Indian revolt of 1857-58.[6]Economic policies forced on India were " anxious more with defending and promoting British benefit than with advancing the interests of the Indian population." [7]The British implemented the first patent statute in India in 1856, based on the British Patent Law of 1852.[8]India's Act VI of 1856, " On Protections of Inventions," provided sure exclusive rights to inventors of new manufactures for a 14-year term.[9]The 1856 Act was customized in 1859 and renamed the " Act for granting exclusive privileges to inventors." [10]According to a principal Indian article, the rationale of this legislation was " to facilitate the English Patent holders to obtain direct control over Indian markets." [11]The year 1872 saw endorsement of the Patents and Designs Protection Act, followed by enactment of the Protection of Inventions Act in 1883.[12]The 1872 and 1883 acts were subsequently consolidated in the Inventions and Designs Act of 1888.[13]While the British persistent to advance the patent laws they had forced, India's domestic technology sector raised. Though still principally an agriculture-based economy,[14]the nation's technology industries grew appreciably from the 1880s onward. Vast industrialization during this phase was subjugated by production of textiles, food processing, and metals, still; indigenous pharmaceutical production was not the fraction of the success story.[15]In the meantime, enactment by the British of the Indian Patents and Designs Act, 1911[16]formed for the first time a system of patent management & administration in India underneath the direction of a Controller of Patents. [17]The 1911 Act recognized a draw of intra-British Empire priority system such that a claimant for an Indian patent who had within the preceding

twelve months filed an application for the similar invention in the United Kingdom was entitled to the advantage of the earlier United Kingdom filing date;[18]publications or uses of the innovation in India during the prevailing priority period would not nullify the Indian patent.[19]Patents approved under the 1911 Act expired sixteen years subsequent to their filing date, even though extensions of up to seven supplementary years were available. [20]The 1911 Act remained in force, with various changes & amendments, [21]until sovereign India enacted its first original patent law more than 50 years later. Like its antecedent Acts, the 1911 allowed patenting of pharmaceutical products. In spite of industrial advancement in other sectors such as steel production, the escalation of India's indigenous pharmaceutical industry remained comparatively diminutive throughout the British run. Multinationals apparently used the 1911 Act to thwart Indian drug firms from manufacturing drugs invented in a foreign country.[22]Not astonishingly, the indigenous drug makers viewed the 1911 Act as draconian.[23]Whatever the true intentions fundamental to the 1911 Act, it had insignificant effect in provisos of spurring domestic pharmaceutical novelty. For example, in 1930 a sum of 1, 099 patent applications were filed in India and 80 percent of these were filed by foreigners " intending primarily to set up pre-emptive claims for improvements somewhere else." [24]At the time of independence in 1947 when India's population was just about 400 million persons, only 2, 610 patent applications (on all types of inventions) were filed yearly with the Indian Patent Office.[25]The very small number of filings reflects to some degree, the scarce in of pharmaceutical commotion in India at that time. Prior to World War II, there was " practically no essential drug production in

the country." [26] At the time of freedom in 1947, India's 400 million people represented one-fifth of the world's population. [27] Furthermore, the country at that time was amongst the poorest in the globe. [28] Meeting the potentially confounding requirement for low-cost medicines became a supreme defy for India's new select few. India at this juncture had little in the path of an indigenous pharmaceutical industry. [29] The ill-fated legacy of British-imposed, foreign-favoring patent laws and a largely agrarian economy [30] was a health care system in which most new medicines were manufactured in a foreign country, imported into India and sold there at some of the top prices in the world. [31] International business pharmaceutical corporations largely controlled India's drug industry. [32] Decisive drugs such as insulin and penicillin were completely imported. [33] An ostracized decision of the Bombay High Court awarding the West German chemical giant Hoechst a sanction in opposition to the Indian drug maker Unichem Laboratories supplemented fuel to the fire. [34] India's leaders demanded key changes to the patent law in array to jump-start indigenous manufacture of medicines at reasonable & affordable prices. The Indian government exhausted no time in the launch to craft a home-grown patent law. Only a few months subsequent to Independence, a committee was selected by a decision of the Indian government dated January 10, 1948 to " assess the patent laws in India with a view to ensure that the patent system was more favorable to national interests." [35] The hard work eventually led to the issuance of two comprehensive reports on the patent system. The first report, authored by a committee headed by Indian Supreme Court Justice Bakshi Tek Chand and published in 1950, articulated

the collapse of India's patent system to " kindle invention and encourage utilization of new inventions for industrial purposes." [36] The Chand Report suggested that compulsory licenses be granted and that a " competent machinery should be in existence to tackle the issue of abuses of patents." [37] Based on the Chand Report's recommendations a patent bill was introduced in Parliament in 1953 but that subsequently lapsed. [38] Even though the compulsory licensing provisions of the 1911 Act were altered in 1950 and 1952 in the light of the Chand Report, compulsory licenses were nonetheless rarely sought, at slightest in parts because patent owners retained the right to resist the grant of such licenses and to plead any such grants. [39] A second government-commissioned report was likely the most significant mechanism for the Patents Act, 1970. The Ayyangar Report, came out in 1959, was prepared for the Indian Ministry of Commerce and Industry by retired Indian Supreme Court Justice Rajagopala Ayyangar. [40] The Ayyangar Report, which has been explained as " forming the backbone of the Indian patent system," [41] suggested " radical" [42] changes of India's existing patent laws to accommodate India's fledgling technological progression and industrialization, the need to support and remunerate inventors, and the escalating number of Indian research institutes and stressed on technical education. [43] The report's three-directional strategy has been summarized as: [44] (i) Identification of the types of inventions for which patent fortification should be on hand; (ii) Determination either to forbid the granting of Indian patents to overseas entities or to necessitate working of such patents in India; and (iii) Determination to endure international pressures on India to join international intellectual property conventions such as the Paris

Convention, which required national treatment.[45]By holding out against membership in the existing international IP conventions, India hoped to build up its economy autonomously without " arm-twisting from developed nations." [46]As is not abnormal in Indian legislative matters, alteration came very slowly. Even after the presence of the Ayyangar Report, it took more than ten years before India implemented its own patent law.[47]The India Patents Act, 1970[48]at last came into force on April 20, 1972.[49]The main noteworthy characteristic of the India Patents Act, 1970, was its abolishment of patentability for pharmaceutical products. The Act purposely prohibited patents on " substances anticipated for use, or capable of being used, as food or as medicine or drug, or . . . involving the substances prepared or formed by chemical processes (including alloys, optical glass, semi-conductors and inter metallic compounds)."[50]Processes for the production of such substances remained patentable, nevertheless,[51]with an extremely short patent term. Process patents would only last for much shorter of five (5) years from sealing or seven (7) years from the date of the patent, [52]whilst the term of all other types of patents (e. g., mechanical devices) was fourteen (14) years from the date of the patent.[53]The Patents Act, 1970, also incorporated unrestrained compulsory licensing provision, such that patented processes for forming substances able of being used as medicine or food were deemed involuntarily approved with the title " licenses of right." [54]India quite bluntly set forward the justifications for its wide confines on patent exclusivity in the 1970 Act's proclamation of " general principles;" namely, " that patents are granted to encourage inventions and to protect the inventions those are worked in India on a

commercial scale and . . . that they are not approved merely to facilitate patentees to enjoy a monopoly for the importation of the patented article . . . ."[55]No longer able to defend their pharmaceutical product innovations in the Indian market, foreign enterprises significantly cut back their patent filings in India. The ultimate monetary effect of the India Patents Act, 1970, was a thespian increase in domestic generic drug manufacturing and a sharp cut in the price of medicines sold in India. Pharmaceutical products patented exterior of India could be freely imitated in India under the Act, so long as the process or method by which they were formed did not violate an Indian process patent (which in any incident lasted only 5- 7 years). India developed a standing as a " pirate" nation skilled at copying drugs invented and patented in other countries.[56]The " pirate" tag was overly derogatory, however, and contradicted the basic principle of territoriality in patent law. No violations of any overseas patent laws occurred so long as the copied drugs were made and sold only in India (or exported only to other countries that equally did not identify pharmaceutical product patents).[57]In determining its first aboriginal patents system, India made a purposeful selection to kindle domestic drug development and decrease the cost of medicines. It's Patents Act, 1970, " was anticipated to support the beginning of local industries to smash the obstruct of foreign chemical companies."[58]With the probable omission of those countries that absolutely repealed their patent systems for the time period of the nineteenth century,[59]no clearer instance exists in modern history of a nation restructuring its patent laws " as a tool . . . to attain its national priorities"[60]than India's endorsement of its Patents Act, 1970. In the stir of



the new legislation, India's generic drug industry flourished as aboriginal firms made massive gains in market share adjacent to the MNCs.[61]A number of MNCs went out of India or chose not to invest here given the lack of patent safety.[62]At the similar time, scientists engaged by the generic firms became expert in process chemistry and reverse engineering. Drug prices in India fell significantly.[63]Regardless of the thespian gyrate in domestic drug development after the Patents Act, 1970, India's generic drug industry did not become an innovator of novel molecules. Practically no research and progress into novel molecules was undertaken in India in the pre-TRIPS era,[64]subsequent to freedom from Great Britain in 1947 the British Raj was replaced with the " License Raj," " a gigantic system of national and state-level licenses and quotas" which restricted Indian business.[65]The first actual progress to a liberated market for India occurred in 1991, as a consequence of a balance of payments crisis.[66]Led by then Finance Minister Manmohan Singh (today India's Prime Minister), the " license raj" was thoroughly transformed. " The rupee was devalued; import restrictions were demolished and customs duties slashed; industrial licensing was liberalized and the capital markets opened up." Regardless of its domestic economic reforms, India led the resistance to insertion of patent and intellectual property rights in a GATT agreement for the first three years of the Uruguay Round of negotiations.[67]India and other developing countries saw the GATT framework as a device by which rich nations would compel tough IPRs as the cost of much-needed entrance for the developing world to western markets.[68]Although at the start coupled in its resistance by other advanced developing countries such as Brazil, Argentina, and

Mexico, when these countries altered their positions India was no longer able to resist alone.[69]By 1989 India had upturned its anti-TRIPS stand and decided to do more serious negotiations over patent security, while at the same time maintaining that the scope of patent protection necessary should fluctuate with an individual country's degree of economic development.

[70]India is viewed as the nation principally dependable for the TRIPS' multi-year transition periods,[71]which the multinational pharmaceutical industry had determinedly opposed.[72]India signed the Uruguay Round Agreements (along with 116 other nations) on April 15, 1994,[73]and became a member of the WTO effective January 1, 1995.[74]Thus India became duty-bound to modify its domestic intellectual property laws in order to come into agreement with the WTO's TRIPS Agreement.[75]Certain implementations were mandatory straight away while others could be delayed for the time period of the relevant transition period. Most remarkably, as a country that had not granted patent protection on pharmaceutical products at the time of its entry into the WTO, India was given ten years, i. e., until January 1, 2005, to fully employ that part of TRIPS into its laws.[76]The TRIPS-catalyzed change of India's patent laws has thus far involved a three-stage process[77]related to three acts amending the Patents Act, 1970 (referred to throughout India's patent laws as the "Principal Act"). First, a "mailbox" facility was formed to set up, so-called pipeline security for pharmaceutical product patent applications filed (but not taken up by the Patent Office for examination) during India's ten-year TRIPS transition time that ranged from January 1, 1995 to December 31, 2004. The mailbox procedure, along with exclusive marketing rights (EMRs), was at first implemented by Presidential

decree. In the consequences of a WTO dispute proceeding brought by the U. S., India officially enacted the mailbox facility into law by Parliament's passage of the Patents (Amendment) Act, 1999.[78]Second, the Principal Act was amended by the Patents (Amendment) Act, 2002,[79]so as to give the TRIPS-required twenty- year patent term, turnaround of the burden of proof for process patent infringement, and modifications to compulsory licensing necessities. Lastly, India put pharmaceutical product patent safety into full effect as of January 1, 2005, via the Patents (Amendment) Act, 2005.[80]