

PATENTIBILITY OF MICROORGANISMS IN INDIA

Inventions pertaining to Microorganisms and other Biological material were subjected to product patent in India unlike many developed countries. But with effect from 20.05.2003 India has started granted patents in respect of invention related to microorganisms though India was not obliged to introduce laws for patenting microorganisms per se before 31.12.2004. Microorganisms patenting per se being considered to be a product patent the period of protection was 5 years from the date of grant or 7 years from the date of filing of application for patent. Now grant of patents for microbiological inventions is for a period of 20 years from the date of filing.

The most vital and important distinction between the legal practices of the India and developed countries is that India (developing countries) do not allow patenting of microorganisms that already exist in nature as the same is considered to be a discovery as per the provisions of the section 3(d) and therefore not patentable. But genetically modified versions of the same microorganisms that result in enhancement of its known efficacies are patentable.

The grants of Patent in respect of Microorganisms depend upon the regulations concerning the requirements for the deposition of Microorganisms under the Budapest Treaty of which India has become a member and accessibility of that microorganism from the depositories. As per proviso (ii) to section 10(d) the Microorganism if not being described fully and particularly and is not available to public the said Microorganism is to be deposited before the International Depository Authority under the Budapest Treaty with 3 months of making application in India. All details, available characteristics of the Microorganisms and details of depository institutions shall be mentioned in specification for correctly identifying the same. Further access to the same is required to be made available only after date of Application in India or date of priority. For the purpose of Microorganisms and other Biological materials **Microbial Type Culture Collection and Gene Bank (MTCC)** is an internationally recognised depository institution.

It is therefore advisable before proceeding to file a patent application in respect of Microorganisms and other biological material to ensure that the same is not hit by the provisions of the section 3(d) of the Indian Patent Act and the invention is not a mere discovery of what already exist in nature

and in case of genetically modified variant of the Microorganism or other biological material the invention results in enhancing the efficacy of the already existing strain of the Microorganism or other biological material.

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